

NR7(MT)

**Network Rail Framework Agreement
for the
Provision and Operation
of
a “Thunderbird” Recovery and Incident Response Service
for the Eastern Region**

Agreement No.: ecm_46693

FORM OF AGREEMENT

This Agreement is made

between:

1. **NETWORK RAIL INFRASTRUCTURE LIMITED** (a company registered in England and Wales under number 02904587) whose registered office is at Waterloo General Office, London, SE1 8SW (the “**Client**”); and
2. **COLAS RAIL LIMITED** (a company registered in England under number 02995525) whose registered office is at 25 Victoria Street, London, SW1H 0EX (the “**Supplier**”).

Background

The Client wishes to have the following services provided: A recovery and incident response locomotive service for the Eastern Region to put passengers first and improve network resilience in the region.

Now it is hereby agreed as follows:

- 1 Defined terms used in this Agreement have the meanings set out in the Conditions (as defined below) unless otherwise specified.
- 2 This Agreement comprises:
 - 1.1 this Form of Agreement;
 - 1.2 Contract Data
 - 1.3 Contract Specific Conditions (if any);
 - 1.4 Conditions;
 - 1.5 Corporate Social Responsibility Schedule;
 - 1.6 Scope;
 - 1.7 Contract Requirements HSEA;
 - 1.8 Preliminaries;
 - 1.9 Pricing Document; and
 - 1.10 Key Performance Indicators

Any discrepancy or ambiguity between any of the above documents shall be resolved by construing those documents in the descending order of priority shown above.

- 3 For the purposes of section 45 of the Procurement Act 2023, and without limiting clause 3 (Contract Orders) of this Agreement, the estimated value of this Agreement over its duration is £9,000,000.00, covering all Contract Orders awarded to all suppliers on this Agreement.
- 4 The Client and the Supplier agree that the Term is, subject to the provisions of this Agreement, 36 months from 00:01 8th January 2026.
Term clause 5B applies
- 5A This clause 5A applies if stated above. This Agreement expires at the end of the Term provided that, without limiting clause 19.2 of this Agreement, the Client may break the Term on a Break Date by

notifying the Supplier not less than [three] months prior to the relevant Break Date. After the Client has notified a break, references in this Agreement to the "Term" are deemed to be references to the period ending on the relevant Break Date.

- 5B This clause 5B applies if stated above. This Agreement automatically expires at the end of the Term, but may be extended prior to its end, at the Client's sole discretion, by the Client issuing written notices of extension to the Supplier, provided such notices do not extend the Term beyond an additional 36 months.
- 6 In consideration of the payments to be made by the Client to the Supplier the Supplier hereby covenants with the Client to provide the Services in conformity in all respects with the provisions of this Agreement.
- 7 The Client hereby covenants to pay to the Supplier in consideration of the provision of the Services the Contract Price at the times and in the manner prescribed by this Agreement.

In witness whereof the Client and the Supplier have caused this Agreement to be executed in duplicate on the date first stated above, as follows:

EXECUTED AS A DEED by **NETWORK RAIL INFRASTRUCTURE LIMITED**

acting by its attorney.....

in exercise of a power of attorney dated in the presence of:

Signature of witness

Name of witness

Address of witness

I confirm that I was physically present when signed this deed

..... [signature of witness]

OR

SIGNED for and on behalf of **NETWORK RAIL INFRASTRUCTURE LIMITED**

by:

Authorised signatory

Printed Name:.....

THE COMMON SEAL of

.....
was affixed to this DEED in the presence of:

Director

Printed Name:.....

Director/Company Secretary

Printed Name:.....

OR

SIGNED AS A DEED for and on behalf of

.....
By

Director

Printed Name:.....

Director/Company Secretary

Printed Name:.....

OR

SIGNED for and on behalf of

.....
By

Authorised signatory

Printed Name:.....

For agreements executed using the DocuSign electronic signature process, the digital certification for the signatures of both Parties and date of execution can be found on the Electronic Execution Page at the end of the contract documentation.

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1	<u>Client's Representative (Clause 1)</u>	
2	<u>Supplier's Representative (Clause 1)</u>	
3	<u>Commencement Date (Clause 1)</u>	08/01/2026 (8th January 2026)
4	<u>Volume of Services committed (Clause 3.5)</u>	Nil
5	<u>Parent company guarantee (Clause 8.2)</u>	Not Required
6	<u>Insurance</u> Employer's liability insurance (Clause 9.2) Loss or damage excess for any Client's Plant or Supplier's Plant (Clause 9.4)	
7	<u>Addresses for Service (Clause 22)</u> The addresses for service of the Parties under Clause 22 are as follows: (i) Client: the address stated in the Form of Agreement marked for the attention of: (ii) Supplier: the address stated in the Form of Agreement marked for the attention of:	 The Company Secretary With a copy to; 1.  and 2. Client's Representative by email. The Company Secretary With a copy to; 1.  and 2. 25 Victoria Street Colas Rail Ltd, Floor 3, SW1H 0EX, London.
8	<u>Liability for Railway Costs (Clause 24)</u>	Nil.
9	<u>Aggregate Liability Cap (Clause 37.1)</u>	
10	<u>Break Date(s) (Clause 5A of the Form of Agreement)</u>	Not applicable

11 IR35 (Corporate Social Responsibility Schedule) - Where the intermediaries legislation applies the Client deems that ITEPA 2003 Part 2 Ch10 s61M 1(d) applies to Services carried out under the Agreement (within IR35) as follows: Does not apply. CEST determination 070225-10366

12 The commercially sensitive information which is genuinely commercially sensitive and the disclosure of which would be the subject of an exemption under the FOIA, the EIRs or under any Procurement Policy Notes or would be considered sensitive commercial information under section 94 of the Procurement Act 2023 is

<u>Date</u>	<u>Items</u>	<u>Duration</u> of <u>Confidentiality</u>
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CONTRACT SPECIFIC CONDITIONS

None.

CONDITIONS

1 Definitions and Interpretation

Defined
Terms

1.1 In this Agreement:

“Adjudicator” means a person nominated by the President or Vice-President for the time being of the Technology and Construction Bar Association to act as Adjudicator under this Agreement;

“Aggregate Liability Cap” has the meaning given to it in Clause 37.1 (Limits of Liability).

“Agreed Rail Industry Period” means each four week consecutive accounting period commencing on 1 April in each calendar year;

“Assessment Day” means the day which is the tenth day after the end of each Agreed Rail Industry Period;

“Break Date” means the date(s) set out in the Contract Data;

“Client” means the first Party named in the Form of Agreement and its permitted assignees;

“Client’s Facilities” means any accommodation, Stabling Points, equipment and Plant to be made available by the Client to the Supplier, as described in the Scope;

“Client’s Instructions” means any written instructions issued to the Supplier by or on behalf of the Client;

“Client’s Representative” means the person identified in the Contract Data as having authority to act on the Client’s behalf under this Agreement to the extent provided in clause 6.1 (Client’s Instructions and Contract Orders) and any replacement for that person notified by the Client to the Supplier under that clause;

“Codes” means the British Standard Codes of Practice, regulations and guidance notes issued by the Health and Safety Executive (as amended or replaced from time to time) and any other regulations, codes or notes issued by relevant authorities and bodies;

“Commencement Date” means the date referred to as such in the Contract Data;

“Commercially Sensitive Information” means the information identified in the Contract Data (if any) comprising information that is genuinely commercially sensitive in nature relating to:

- (i) the pricing of the Services;
- (ii) details of the Supplier’s intellectual property rights; and
- (iii) the Supplier’s business and investment plans,

the disclosure of which would be the subject of an exemption under the FOIA, the EIRs or under any Procurement Policy Notes or would be considered sensitive commercial information under section 94 of the Procurement Act 2023 which the Supplier has indicated to the Client that, if disclosed by the Client, would cause the Supplier significant commercial disadvantage or material financial loss;

“Confidential Information” means any information of the Client or the Supplier, however it is conveyed, that relates to the business, affairs, developments, trade secrets, Know-How, personnel, suppliers and contractors of the Client or the Supplier (as the case may be),

including Intellectual Property Rights, together with information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential, and, in the case of information of the Client, includes Personal Data and, in the case of information of the Supplier, includes Commercial Sensitive Information;

“Contract Area” means the area where the Services are to be carried out as described in the Scope;

“Contract Data” means the Contract Data referred to in the Form of Agreement;

“Contract Order” means any order issued to the Supplier by the Client pursuant to Clause 3 in respect of any of the Services;

“Contract Price” means the amount to be paid by the Client to the Supplier in full consideration for the provision of the Services by the Supplier and the performance by it of its other obligations under this Agreement calculated in accordance with the provisions of the Pricing Documents;

“Corporate Social Responsibility Schedule” means the Corporate Social Responsibility Schedule referred to in the Form of Agreement;

“Crown” means the government of the United Kingdom (including the Northern Ireland Executive Committee and Northern Ireland Departments, the Scottish Government and the National Assembly for Wales), including, but not limited to, government ministers, government departments, government and particular bodies and government agencies;

“Crown Body” means any department, office or agency of the Crown;

“Daily Work Returns” means the forms (sometimes also known as PHIRES forms) in the format specified in the Scope to be completed by the Client and Supplier in relation to the ordering of Plant and/or recording of Services carried out;

“Data Protection Legislation” has the meaning given to it in Clause 13.1;

“Documents” means all plans, drawings, specifications, schedules, reports, records calculations, correspondence and other documents (including any computer software developed by the Supplier to generate them and any design contained in them) prepared or provided by the Supplier in connection with this Agreement;

“EIRs” means the Environmental Information Regulations 2004 and any guidance and/or codes of practice issued by the Information Commissioner in relation to such regulations;

“FOIA” means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation;

“Force Majeure” means any event, circumstance, matter or cause affecting the performance by either the Client or the Supplier of its obligations arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control which prevent or materially delay it from performing its obligations under the Agreement and which is not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party, but excluding:

- (i) any industrial dispute relating to the Supplier, the Supplier’s staff (including any subsets of them) or any other failure in the Supplier’s supply chain;

(ii) any event, occurrence, circumstance, matter or cause which is attributable to the wilful act, neglect or failure to take reasonable precautions against it by the Party concerned; and

(iii) any failure or delay caused by a lack of funds;

“Guarantor” means the Guarantor under the Parent Company Guarantee provided in accordance with Clause 8;

“Insolvent” has the meaning set out below:

(i) a company becomes insolvent:

- (A) when it enters administration within the meaning of Schedule B1 to the Insolvency Act 1986;
- (B) on the appointment of an administrative receiver or a receiver or manager of its property under Chapter I of Part III of that Act, or the appointment of a receiver under Chapter II of that Part;
- (C) on the passing of a resolution for voluntary winding-up without a declaration of solvency under section 89 of that Act; or
- (D) on the making of a winding-up order under Part IV or V of that Act;

(ii) a partnership becomes insolvent:

- (A) on the making of a winding-up order against it under any provision of the Insolvency Act 1986 as applied by an order under section 420 of that Act; or
- (B) when sequestration is awarded on the estate of the partnership under section 22 of the Bankruptcy (Scotland) Act 2016 or the partnership grants a trust deed for its creditors;

(iii) an individual becomes insolvent:

- (A) on the making of a bankruptcy order against him under Part IX of the Insolvency Act 1986; or
- (B) on the sequestration of its estate under the Bankruptcy (Scotland) Act 2016 or when he grants a trust deed for its creditors; and

(iv) a company, partnership or individual shall also be treated as insolvent on the occurrence of any event corresponding to those specified in sub-paragraph (i), (ii) or (iii) above under the law of Northern Ireland or of a country outside the United Kingdom;

“Intellectual Property Rights” or “IPRs” means:

(i) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in internet domain names and website addresses and other rights in trade names, designs, Know-How, trade secrets and other rights in Confidential Information:

(ii) applications for registration, and the right to apply for registration, for any of the rights listed in the sub-paragraph (i) above that are capable of being registered in any country or jurisdiction;

- (iii) all other rights having equivalent or similar effect in any country or jurisdiction; and
- (iv) all or any goodwill relating or attached thereto;

“Intermediaries Legislation” IR35 means Income Tax (Earnings and Pensions) Act 2003 (ITEPA), Social Security Contributions and Benefits Act 1992 (SSCBA) and all other related statutes and regulations;

“Key Performance Indicators” means the Key Performance Indicators referred to in the Form of Agreement;

“Know-How” means all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know how relating to the Services but excluding know how already in the Supplier's or the Client's possession prior to entering into this Agreement;

“Law” means any Act of Parliament or subordinate legislation within the meaning of Section 2(1) or the Interpretation Acts 1978 or any exercise of the Royal Prerogative and any enforceable Community right within the meaning of the European Communities Act 1972;

“Maintainer/Operator” means the person or persons employed by the Supplier to maintain, service, operate and drive the Plant as required by the Scope and pursuant to each Contract Order;

“Party” means the Supplier or the Client (as appropriate) and “Parties” shall mean both of them;

“Personal Data” has the meaning given to it in Clause 13 (Protection of Personal Data);

“Plant” means the machines owned by the Client or the Supplier as described in the Scope, to be used by the Supplier to perform the Services in accordance with this Agreement;

“Preliminaries” means the preliminaries referred to in the Form of Agreement;

“Pricing Documents” means the Pricing Documents referred to in the Form of Agreement;

“Railway Costs” has the meaning given to it in Clause 24.4 (Railway Costs);

“Railway Costs Cap” has the meaning given to it in Clause 24.4 (Railway Costs);

“Real Living Wage” means the separate basic hourly rates for London and the rest of the UK, as applicable, as set by the Living Wage Commission (before tax, other deductions and any increase for overtime), as may be revised from time to time;

“Request for Information” means a request for information or an apparent request under the Code of Practice on Access to government Information, FOIA or the EIRs;

“Route” means the route in the Contract Area where the Services pursuant to each Contract Order are to be carried out;

“Scope” means the Scope referred to in the Form of Agreement;

“Services” means all of the Services required to be provided by the Supplier pursuant to this Agreement as described in the Scope and in accordance with the Contract Orders;

“Shifts” means the shifts for operation of the Plant as part of the execution of the Services as defined in the Scope;

“Site” means the area in the Contract Area where the Services pursuant to each Contract Order are to be carried out;

“Stabling Point” means the stabling points for the Plant made available by the Client or provided by the Supplier as described in the Scope or such other stabling points as may be made available from time to time;

“Sub-Supplier” means any sub-supplier of the Supplier including any sub-suppliers of any such sub-suppliers;

“Supplier” means the second Party named in the Form of Agreement and its permitted assignees, otherwise also referred to as the “Supplier”;

“Supplier Personnel” means all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Sub-Supplier engaged in the performance of the Supplier’s obligations under this Agreement;

“Supplier’s Representative” means the representative named in the Contract Data employed by the Supplier with overall responsibility for the performance of the Services under this Agreement, or any replacement of it agreed by the Client from time to time;

“Term” means the period specified in the Form of Agreement, as the same may be adjusted under this Agreement and the expiry of the Term shall mean the expiry of the Term for any reason, whether pursuant to the Form of Agreement by lawful termination or otherwise;

“Transparency Information” means:

- (i) any information which is published in accordance with guidance issued by His Majesty’s Government, from time to time;
- (ii) any information or notices, permitted or required to be published by the Procurement Act 2023, any regulations published under it, and any Procurement Policy Notes, subject to any exemptions set out in sections 94 and 99 of the Procurement Act 2023, which is Commercially Sensitive Information; and
- (iii) any information about this Agreement, including the content of this Agreement, and any changes to this Agreement agreed from time to time, as well as any information relating to the Services and performance pursuant to this Agreement required to be disclosed under FOIA or the EIRs, subject to any exemptions, which will be determined by the Client, taking into consideration any information which is Commercially Sensitive Information; and

“Variation of Services” means variations, additions or other amendments to the Services.

- 1.2 Any reference to clause or sub-clause is to the relevant clause or sub-clause of these conditions of contract.
- 1.3 The headings are included for convenience only and shall not affect interpretation of this Agreement.
- 1.4 Use of the singular includes the plural and vice versa.
- 1.5 Any reference to a statute or statutory instrument shall be construed as referring to any modification extension or re-enactment thereof from time to time.
- 1.6 Any phrase introduced by the term “including” shall be construed as illustrative and without limitation.

- 1.7 Except where the context otherwise requires, any reference to a “person” includes any individual, partnership, firm, company, corporation, joint venture, trust, association, organisation or other entity, in each case whether or not having separate legal personality.

2 Planning

Planning
of
Services

- 2.1 The Client shall, in accordance with the requirements of the Scope:
- 2.1.1 devise the overall plans for carrying out and completing the Services; and
 - 2.1.2 progressively issue more detailed plans to the Supplier.
- 2.2 Within the overall plans established by the Client pursuant to Clause 2.1, the Supplier shall provide a detailed plan for the carrying out of the Services in the Contract Area in accordance with the requirements of the Scope.
- 2.3 The Client shall be responsible for, in accordance with the requirements of the Scope:
- 2.3.1 making any site management arrangements that are necessary for the Plant to be operated within any Sites;
 - 2.3.2 the cost and provision of possession arrangements and possession management staff required for the safe operation of the Plant within any Sites;
 - 2.3.3 recording the arrival and departure of the Supplier Personnel from any Sites;
 - 2.3.4 specifying if the Plant is required to enter or leave any Routes or Sites in a particular orientation or direction; and
 - 2.3.5 ensuring that static, kinematic and passing clearances are such as to avoid damage to the Plant.

3 Contract Orders

Contract
Orders
for
Routes or
Sites

- 3.1 In accordance with the requirements of the Preliminaries or the Scope, at the Commencement Date or shortly thereafter, the Client’s Representative shall issue a Contract Order regarding the quantity and type of Plant to be provided (whether by the Client or by the Supplier) and maintained. The Client’s Representative may vary the quantity and type of Plant to be provided and maintained to the extent and frequency detailed in the Preliminaries or the Scope.
- 3.2 No less than the time period specified in the Preliminaries or the Scope in advance of the Services being required for any Route or at any Site, the Client shall issue to the Supplier a draft Contract Order stating:
- 3.2.1 the Services to be executed pursuant to the Contract Order;
 - 3.2.2 the Route or Site in respect of such Services;
 - 3.2.3 the duration of the Shift which shall be ascertained by the Client on a fair and reasonable basis having regard to any indicative periods stated in the Preliminaries or the Scope in relation to the relevant Service to be executed;
 - 3.2.4 any necessary working direction for the Route or Site;
 - 3.2.5 any necessary Site possession entry and exit directions; and

3.2.6 any other information required for completion of the Daily Work Returns or as required by the Preliminaries or the Scope.

Acceptance

3.3 Within seven days of receipt of the Client's draft Contract Order pursuant to Clause 3.2, the Supplier shall either accept the same or shall notify the Client that it does not accept the Contract Order, in which case it shall state in detail what element of the draft Contract Order it does not accept and its reasons therefor. Any dispute in respect of any element of the draft Contract Order which cannot be agreed shall be referred for determination by the Adjudicator under Clause 23.1 and the Adjudicator's decision shall be final and conclusive in relation to the elements to which it relates.

Confirmation of Contract Order

3.4 When all of the elements of the draft Contract Order have been accepted, agreed or determined pursuant to Clause 3.3, and subject to clause 3.5, it shall be final and binding on the Parties and:

3.4.1 the services under that Contract Order shall form part of the Services; and

3.4.2 the Supplier shall proceed to deliver the Services under that Contract Order in accordance with the provisions of this Agreement.

Volume Commitment

3.5 The Client does not warrant the volume of Services to be instructed during the Term except where otherwise stated in the Contract Data and/or the Contract Order. The Client reserves the right to procure any Services described in the Agreement from other suppliers or using its own labour.

3.6 The Client may may exclude the Supplier from participating in the Contract Order process if, in accordance with section 48 of the Procurement Act 2023, the Supplier is an excluded supplier or has, since the award of this Agreement, become an excludable supplier (including by reference to an associated person) and provided that the requirements of section 48(3) of the Procurement Act 2023 have been met.

3.7 After the expiry of the Term, the Client will not issue a Contract Order and the Supplier completes the work under Contract Orders issued before the expiry of the Term.

4 Supplier's Obligations

Quality and Standards

4.1 The Supplier shall provide the Services and fulfil its obligations under this Agreement from the Commencement Date until the expiry of the Term:

4.1.1 with the reasonable skill and care to be expected of highly skilled and experienced service providers providing services of a similar scope, type and complexity to the Services;

4.1.2 to the quality and standards required by the Scope, or where no quality or standard is so specified, to a good quality;

4.1.3 to comply with all applicable Law and the Codes;

4.1.4 to comply with all consents which apply to the performance of the Services;

4.1.5 without compromising the safety of anyone on or about or using the Client's property and/or railway infrastructure;

4.1.6 to comply with the Preliminaries; and

	4.1.7	using suitably qualified and competent Supplier Personnel in accordance with the requirements of the Scope, and the Supplier shall provide the Client with details of the qualifications and experience of such personnel as and when requested.
Operating Licence	4.2	The Supplier shall hold an appropriate operating licence as issued by the Office of the Rail and Road relating to the provision of the Services.
Compliance with Instructions and Orders	4.3	The Supplier shall perform the Services in accordance with the Client's Instructions and Contract Orders.
Maintenance of Plant	4.4	The Supplier shall ensure the Plant is maintained, calibrated and supplied in accordance with the requirements of the Scope and so as to be fully available to undertake the Services envisaged by the Client's overall plans issued under Clause 2.1 and specified in Contract Orders.
Inspection of Plant	4.5	The Supplier shall permit the Client to undertake detailed inspections of any maintenance records and the Plant, as provided for in the Scope, as and when necessary to ascertain compliance with the requirements of the Scope. Where such inspection identifies non-conformance with the Scope either in the condition of an item of Plant or in its maintenance then the Supplier shall produce and implement an action plan to rectify such non-conformances without delay. Until rectification of the non-conformances has been accepted by the Client's Representative, he may issue a notice restricting (including, if appropriate, suspending) the use of the item of Plant. Any Services lost as a result of such restrictions unless due to the acts or omissions of the Client or any other contractor or supplier of the Client shall be deemed to be due to the default of the Supplier for the purposes of calculating payments in accordance with the Pricing Documents.
Use of Client's Plant	4.6	The Supplier shall use the Client's Plant solely in connection with the Services and may not use the Client's Plant for any other purposes without the prior written consent of the Client. The Supplier shall not remove, deface or cover up any name-plate or identification mark or number on the Client's Plant nor shall it attempt to sell, mortgage, charge or otherwise deal with the Client's Plant.
Data from Plant	4.7	Following delivery of each Shift and within the timescales stated in the Scope, the Supplier shall transfer to the Client, in electronic form, all data required by the Daily Work Returns and the Scope. The Supplier shall at all times work with the Client to assist in the development of data capture and transfer.
Reports and meetings	4.8	The Supplier shall provide progress reports and attend meetings with the Client's Representative as required by the Preliminaries and in accordance with the Client's Instructions.
Remedy for failure to comply with Instructions	4.9	If the Supplier fails to perform the Services in accordance with this Agreement and the failure is due to the Supplier and not due to any act or omission of the Client or any other contractor or supplier of the Client, then the Client shall be entitled, in addition to any other remedy available to it, by notice to the Supplier to require the Supplier, at no additional cost to the Client, to remedy such breach within the time stipulated in such notice, and if the Supplier fails to comply with such notice within the period specified by the Client, the Client may at its sole discretion employ another person to remedy such breach and the Client may recover the additional costs incurred by it in so doing from the Supplier (provided that, in an emergency affecting safety, this provision shall apply without the requirement to give prior notice).

Indemnity
for breach

- 4.10 The Supplier shall indemnify the Client and shall keep it indemnified against each and every liability which it may incur to any person whatsoever and against all damage, loss, expense, cost, claims or proceedings suffered or incurred by it to the extent that the same arises out of or in connection with any negligence or breach of duty by the Supplier, its employees, the Sub-Suppliers or other persons engaged by it in relation to this Agreement or any breach by the Supplier of its obligations under this Agreement.
- 4.11 The Supplier shall have and maintain for the duration of the Term a separate Track Access Agreement with the Client which shall cover the provision of the Services.
- 4.12 The Supplier shall promptly request an instruction from the Client's Representative upon receipt of revised editions of the Group Standards or Network Rail Standards referred to in this Agreement. The Supplier shall not action the implementation of such Group Standard or Network Rail Standards until such instruction to do so is received from the Client's Representative. The Price shall be adjusted to take account of such instruction.

5 The Route / Site

Access to
the Routes,
Sites and
Client's
property

- 5.1 The Supplier shall not have possession of any of the Routes, Sites or the Client's Stabling Points, but the Client shall (subject to any restriction included in the Scope or the Preliminaries) provide non-exclusive reasonable access to them for the purposes of this Agreement. Each of the Routes, Sites and the Client's Stabling Points shall only be used by the Supplier for the purpose of carrying out the Services.

Compliance
with Client's
regulations

- 5.2 The Supplier shall comply with the security vetting procedures below:
- 5.2.1 The Supplier shall assure the Client that Supplier Personnel have been subject to legally required pre-employment screening. As a minimum this shall include identity verification and UK right to work checks;
- 5.2.2 to control risk to the railway associated with unsupervised access to sensitive information (OFFICIAL-SENSITIVE or above), Critical National Infrastructure sites and associated systems, certain Supplier Personnel may be required to pass additional security checks such as employment history check, confirmation of UK residency, disclosure of unspent convictions and National Security Vetting (NSV). Roles that require additional security checks will be notified to the Supplier by the Client;
- 5.2.3 The Supplier shall not use Supplier Personnel who are unable to comply with Clauses 5.2.1 and 5.2.2.
- 5.2.4 Supplier Personnel:
- (i) that have access to the Client's infrastructure and premises shall complete Railway Counter Terrorism training;
 - (ii) that are given a log in to the Client's corporate IT system shall complete Security on the Railway training,
- both renewed biennially. Records of training completion shall be kept by the Supplier for five years and made available to the Client on request. The training material will be provided by the Client at no additional cost to the Supplier.

Obstruction
prohibited

- 5.3 Save to the extent reasonably required in the performance of the Services or expressly agreed by the Client and with reasonable mitigation measures in place, the Supplier shall

not interfere with or obstruct any public or private rights or property (including, without limitation, the Client's property, the Client's neighbours' property, railway operations and traffic, road traffic and highways).

Health & Safety 5.4 The Supplier shall comply with the Client's health and safety requirements as set out in the Contract Requirements HSEA. In particular, but without limitation, the Supplier shall ensure that all Supplier Personnel receive safety and skills training in accordance with the requirements of the Contract Requirements HSEA and the Client may instruct the immediate replacement, at the Supplier's cost, of any person on and off the Routes, Sites or Client's property who is not so trained.

Operators 5.5 The Supplier shall ensure that the Maintainer/Operators have the requisite route knowledge to carry out the Services on each Route or Site in the Contract Area in accordance with the requirements of the Scope. If any Maintainer/Operator does not have such knowledge, the Client may instruct the Supplier to employ at the Supplier's cost a conductor in relation to any Services.

Unsuitable employees 5.6 The Client reserves the right under this Agreement to refuse to allow to use the Plant or to allow onto any of the Routes, Sites or Client's property or to permit to be used in connection with the Services any person employed or engaged by the Supplier, or by a Sub-Supplier, whose use would be, in the reasonable opinion of the Client, undesirable. The decision of the Client as to whether any person is to be allowed onto a Route, Site or the Client's property shall be final and conclusive.

6 Client's Instructions and Contract Orders

Client's Representative 6.1 Save for any actions relation to termination of the employment of the Supplier under this Agreement, termination of any Contract Order, or any dispute arising under or in connection with this Agreement, the Client delegates to the Client's Representative all actions of the Client under this Agreement, including issuing Client's Instructions, Contract Orders and notices to the Supplier. The Client may amend or cancel this delegation or replace the Client's Representative by notice to the Supplier.

Adjustment for instructions 6.2 If any Client's Instruction or Contract Order issued under this Agreement:
6.2.1 shall require the Supplier to undertake services not provided for in, or to be reasonably inferred from, this Agreement; or
6.2.2 shall impose any additional obligation or restriction or shall require the omission of any services or of any obligation or restriction,

and provided that such Client's Instruction or Contract Order has not arisen from, and compliance with it does not reveal, any negligence, breach of this Agreement, omission or default of the Supplier, any Sub-Suppliers or any Supplier Personnel, the Contract Price shall be adjusted and the provisions of Clause 6.3 shall apply. Otherwise, the Supplier shall not be entitled to any addition to the Contract Price nor to claim, whether as damages or otherwise, any additional payment in respect of compliance by the Supplier with any such Client's Instruction or Contract Order.

Calculation of adjustment 6.3 The Client's Representative shall, after consultation with the Supplier and within a reasonable time after the issue of such Client's Instruction or Contract Order, ascertain a fair and reasonable adjustment to the Contract Price based on prices or rates included in the Pricing Documents in respect of compliance by the Supplier with such Client's Instruction or Contract Order.

7 Payment

- Contact Price
- 7.1 In consideration of the proper performance of the Services, the Client shall pay to the Supplier the Contract Price in accordance with the Pricing Documents.
- Supplier's Applications
- 7.2 Not less than seven days after the end of each Agreed Rail Industry Period and before the relevant Assessment Day, the Supplier shall present to the Client's Representative an application for payment stating the sum which the Supplier considers will be due on the payment due date and the basis on which that sum is calculated. Such sum shall be calculated on the basis of the total amount due to the Supplier for the performance of the Services, as calculated in accordance with the provisions of the Pricing Documents, (with such supporting documents as may be required by the Pricing Documents) less any amount which may become due to the Client or recoverable by the Client from the Supplier, whether by deduction from the Contract Price under the provisions of this Agreement or otherwise. If the Supplier does not submit such an application for payment before the relevant Assessment Day, the notified sum shall be zero or, if an amount is to be paid to the Client, the amount which the Client considers is to be paid.
- 7.3 The date which is 7 days after the relevant Assessment Day shall be the payment due date for the relevant payment. The final date for payment of the relevant payment shall be 14 days after the relevant payment due date.
- 7.4 If the Supplier makes an application for payment before the relevant Assessment Day but the Client or the Client's Representative does not issue a notice of payment in accordance with clause 7.5, the application for payment shall constitute the notice of payment specifying the sum that the Supplier considers to be due at the relevant payment due date (the notified sum).
- 7.5 Not later than 5 days after the relevant payment due date, the Client's Representative shall issue a notice stating the amount that the Client considers due on the payment due date and the basis on which that sum is calculated (the notified sum). Such notice shall be given even if the amount that the Client considers to be due is zero.
- 7.6 The Supplier shall issue a VAT invoice in the amount stated in the Client's Representative's notice under Clause 7.5 within 2 days of such notice and which includes the correct Agreement and purchase order number and is addressed to "Network Rail, Accounts Payable, P.O. Box 4145, Manchester M60, 7WZ" or original computer-generated pdf invoices can be emailed to invoices@networkrail.co.uk, and the Client shall then issue payment to the Supplier of the amount properly due to the Supplier together with VAT thereon on or before the final date for payment. If the Supplier's invoice does not comply with the requirements of this Clause 7,6 the Client shall be under no obligation to pay the same.
- Correction of errors
- 7.7 All certificates/notices issued under this Agreement shall be issued by the Client with a copy to the Supplier. The Client may, on any payment delete, correct or modify any sum previously paid by it. No certificate/notice or payment issued or made by or on behalf of the Client under this Agreement shall relieve the Supplier from any liability arising out of or in connection with this Agreement.
- 7.8 If a Party intends to pay less than the notified sum, it shall notify the other Party of its assessment of the amount due not later than one day (the prescribed period) before the final date for payment. The notification shall state the basis on which the amount due has been calculated and shall include details of the calculation. A Party shall pay the notified sum unless it has notified its intention to pay less than the notified sum.

7.9 Without prejudice to the Client's other rights and remedies, the Client may deduct from any sums due to the Supplier under this Agreement an amount equivalent to any sum due from the Supplier to the Client (whether such sums are due to the Client under this Agreement or under any other agreement between the Supplier and the Client) and may also deduct any sum of money that is recoverable from or payable by the Supplier under this Agreement from any sum then due or which at any time thereafter may become due under any other agreement between the Supplier and the Client.

Interest on late payment 7.10 If the Client fails to pay the Supplier any sum properly payable under this Agreement on or before the final date for payment of it, the Client shall pay the Supplier simple interest on that sum from the relevant final date for payment until the actual date of payment calculated at a rate of 5% above the base lending rate of the Bank of England. It is agreed that this provision constitutes a substantial remedy for the purposes of Section 9(1) of the Late Payment of Commercial Debts (Interest) Act 1998.

7.11 In this clause 7, time periods stated in days exclude Christmas Day, Good Friday and bank holidays.

8 Guarantees

Warranties and guarantees 8.1 The Supplier shall ensure that the benefit of any warranty or guarantee in respect of the Client's Plant shall not be invalidated by its actions.

Parent Company Guarantee 8.2 If stated to be required in the Contract Data, the Supplier shall obtain and provide to the Client, forthwith upon entry into this Agreement, a parent company guarantee in the form appended to the Preliminaries from the Supplier's ultimate holding company. For these purposes "ultimate holding company" shall mean the parent company of the group of companies of which the Supplier is a member (as each of those terms is defined in s.170 Taxation of Chargeable Gains Act 1992).

8.3 The Supplier may propose for the Client's consent an alternative guarantor who is also owned by the ultimate holding company of the Supplier. The reasons for which the Client may withhold such consent include that such guarantor's commercial position is not strong enough to carry the guarantee.

Failure to provide guarantee 8.4 The Supplier's compliance with the provisions of Clause 8.2 shall be a condition precedent to any obligation on the part of the Client to make any payment that might otherwise be due under this Agreement, and the Supplier acknowledges that it has no entitlement either to receive payment or to exercise any rights in respect of non-payment arising under this Agreement unless and until the Supplier has provided any parent company guarantee so required.

9 Indemnities and Insurance

Indemnity 9.1 The Supplier shall indemnify the Client and keep the Client indemnified against each and every liability which the Client may incur to any person whatsoever and against all damage, expense, loss, cost, claim or proceedings suffered or incurred by the Client to the extent that the same relates to personal injury or death of any person whomsoever or loss or injury or damage to any property real or personal arising out of the or in the course of or caused by the carrying out of the Services, except to the extent that the same is due to any act or neglect of the Client or the Client's Representative.

Supplier's Employer's Liability Insurance 9.2 Without prejudice to the Supplier's obligation to indemnify the Client under Clause 9.1:

Client's Third Party Insurance and Insurance of the Client's Property other than the Plant

- 9.2.1 the Supplier shall maintain and cause the Sub-Suppliers to maintain insurance in respect of claims for personal injury and death of any person under a contract of service or apprenticeship with the Supplier or such Sub-Supplier as the case may be arising out of or in the course of such person's employment. Such insurance shall comply with the Employer's Liability (Compulsory Insurance) Act 1969 and any statutory orders made thereunder or any amendment or re-enactment thereof and shall be for the sum specified in the Contract Data for any one occurrence or series of occurrences arising out of one event;
- 9.2.2 the insurance policy referred to in Clause 9.2.1 shall indemnify the Client in the like manner to the Supplier but only to the extent that the Supplier may be liable to indemnify the Client under the terms of this Agreement;
- 9.2.3 as and when it is reasonably required to do so by the Client, the Supplier shall produce and shall cause any Sub-Suppliers to produce for inspection by the Client documentary evidence that the insurance required by this Clause 9.2 is properly maintained.

9.3 Other than as specifically stated herein, without prejudice to the Supplier's obligations to indemnify the Client under Clause 9.1, the Client shall take out and maintain:

- 9.3.1 a policy in the joint names of the Supplier, Sub-Suppliers and the Client against liabilities for death of or injury to any person (other than any person in the employment of the Client or the Supplier where and to the extent that any such liabilities should reasonably be covered by the insurance maintained by the Supplier pursuant to Clause 9.2) or loss of or damage to any property (other than the Plant or other property of the Client or the Supplier) arising out of the performance of the Services, for a sum not less than [REDACTED] for any one occurrence or series of occurrences arising out of one event;
- 9.3.2 a policy or policies of insurance (or self-insurance arrangements) in respect of loss or damage to property of the Client (other than the Plant) arising out of or in connection with the performance of the Services and business interruption costs consequent upon such loss or damage, with a waiver of subrogation in favour of the Supplier and Sub-Suppliers. The Supplier's liability under Clause 9.1 shall exclude loss or damage to such property of the Client and business interruption costs consequent thereon, to the extent of the insurance (or self-insurance) provided for in this Clause 9.3.2 except for the excesses stated in Project Insurance Manual for each and every occurrence of such loss or damage.

The Client shall not be responsible for any amounts in excess of the limits of indemnity and sums insured or any excess or retained liability or risks not insured or excluded by the terms, exceptions or conditions of such insurance policies.

Insurance of Plant

9.4 The Supplier shall each insure in the joint names of itself and the Client the Supplier's Plant against all risk of loss or damage howsoever caused. Such insurance shall cover the replacement value of the Plant. The Client shall effect a self-insurance arrangement in respect of all risk of loss or damage to the Client's Plant. The Supplier shall be responsible for any loss or damage to the Client's Plant for the first amount of any claim up to the value of the excess stated in the Contract Data unless such claim shall have been caused by the negligent act or omission of the Client, or the Client's servants, agents, suppliers or sub-suppliers. The Client shall be responsible for any loss or damage to the Supplier's Plant for the first amount of any claim up to the value of the Supplier's insurance policy excess or the

amount stated in the Contract Data, whichever is the least, where such claim shall have been caused by the negligent act or omission of the Client, or the Client's servants, agents, suppliers or sub-suppliers.

Evidence of the Client's Insurance

9.5 As and when it is reasonably required to do so by the Supplier, the Client shall produce for inspection by the Supplier documentary evidence that the insurance required by Clause 9.3 is properly maintained.

Breach by Supplier

9.6 Should the Supplier or any Sub-Supplier be in breach of any of their respective obligations under this Clause 9, the Client may itself insure against any risk in respect of which the default shall have occurred and may deduct a sum or sums equivalent to the amount paid or payable in respect of the premiums from any monies due or to become due to the Supplier under this Agreement, or, if none are due, may recover the amount paid from the Supplier as a debt.

10 Claims Handling Provisions

Claims Handling Agreement

10.1 In these provisions, "The Claims Allocation and Handling Agreement" means the Agreement so entitled dated 1 March 2019 and made between the several parties whose names are contained in Schedule 6 thereof (the "Industry Parties") and Railway Claims Limited (the "Agency"), as amended from time to time in accordance with its terms and the expressions defined in the Claims Allocation and Handling Agreement shall have the same meanings in this Clause 10. The Client shall supply the Supplier with a copy of each amendment thereto as and when it is made.

Application of CAHA

10.2 These provisions shall apply:

10.2.1 if this Agreement is in connection with the maintenance or operation of the Client's Railway Assets; and

10.2.2 in respect of the period (if any) while the Supplier is an Independent Supplier; and

10.2.3 where a claim, which arises out of or is connected with this Agreement, is made by a third party who does not have a contract with the Supplier:

(i) against the Client or the Agency, which may result in a claim being made against the Supplier; or

(ii) against the Supplier, which may result in a claim being made against the Client or the Agency (whether by the Supplier or otherwise).

10.3 The Supplier irrevocably appoints the Client as its agent to authorise the Agency (in consultation, where necessary, with Industry Parties and their insurers) to defend such a claim on behalf of the *Supplier* and the Industry Parties, in accordance with the Claims Allocation and Handling Agreement. In relation to such a claim, the Supplier is bound by the terms of that agreement as if the Supplier were a party to it.

Payments under CAHA

10.4 Where such a claim results in a payment to the third party, the Supplier agrees that liability for such payment, and the costs of handing and defending the claim, shall be allocated in accordance with the Claims Allocation and Handling Agreement. The Supplier agrees to participate in the procedure for allocating liability set out in the Railway Industry Dispute Resolution Rules; and to be bound by the result as if the Supplier were party to those Rules, and such matters shall not be referable to adjudication or litigation in accordance with this Agreement.

- 10.5 Clauses 10.3 and 10.4 do not apply to any claim in respect of which the Supplier admits that it is liable and that no Industry Party is liable. In such a case, the Supplier itself may defend the claim.
- 10.6 Without limiting and in addition to any other rights and remedies of the Client, the Supplier shall indemnify the Client and keep the Client indemnified against all losses, claims, liabilities, costs and expenses which are borne by the Client under the Claims Allocation and Handling Agreement, and which arise out of either a breach of this Agreement by the Supplier or a breach of a duty of care owed to a third party, which is the subject of a claim under the Claims Allocation and Handling Agreement.

11 Copyright, Intellectual Property, Confidentiality, Photographs and C&AG

- 11.1 The Intellectual Property Rights in all designs, drawings, specifications, software, electronic data, photographs, plans, surveys, reports, and all other documents which the Supplier has supplied to the Client in accordance with this Agreement and which the Supplier has created and/or developed for the purposes of performing its obligations under this Agreement (whether created before or during the term of this Agreement, including, without limitation any and all information subsisting or referred to within any technical, operation and/or maintenance manuals) ("**Documents**") shall remain vested in the Supplier but the Supplier hereby grants to the Client an irrevocable, perpetual, royalty free, non-exclusive licence to copy disclose use adapt and reproduce the Documents for any purpose whatsoever in connection with the Client's permitted business. The Supplier further agrees:
- (i) that the Client may grant sub-licences to other persons for the purposes stated in the licence granted above;
 - (ii) that the Client may assign, novate or otherwise transfer its rights and obligations under the licence granted pursuant to this Clause 11.1 to a Crown Body or to anybody (including any private sector body) which performs or carries on any functions and/or activities that previously had been performed and/or carried on by the Client; and
 - (iii) to the extent that the Supplier does not have ownership of the Intellectual Property Rights in any of the Documents supplied to the Client, use reasonable endeavours to procure from the Intellectual Property Rights holder a licence in the form set out in the licence above. In the event that the Supplier is unable to procure the right to grant to the Client a licence in accordance with the foregoing the Supplier shall procure that the third party grants a direct licence to the Client on industry acceptable terms.
- 11.2 The Supplier shall supply copies of the Documents to the Client and to the Client's other contractors and consultants for no additional fee to the extent necessary to enable them to discharge their respective functions in relation to this Agreement or related works or services.
- 11.3 After the termination of the employment of the Supplier under this Agreement or expiry of the Term, the Supplier shall supply the Client with copies of such of the Documents as the Client may from time to time request (such copies to be in the form required by the Client, including hard copies and electronic copies) and the Client shall pay the Supplier's reasonable costs for producing such copies.
- 11.4 In performing the Services, the Supplier shall not infringe the Intellectual Property Rights of any third party. The Supplier shall indemnify the Client against all loss damage costs and

expenses for which the Client is or becomes liable as a result of any infringement or alleged infringement by the Supplier of any third party's Intellectual Property Rights.

11.5 The Supplier shall not be liable for any use of the Intellectual Property Rights for any purpose other than that for which it was originally prepared or supplied by the Supplier.

11.6 Notwithstanding Clause 11.1, the Client shall have no right to:

11.6.1 decompile any computer software which forms part of the Documents licensed to the Client in this Clause 11 nor shall the Client attempt to derive any algorithms, techniques or other features of the software or modify or attempt to create any derivative works from the software; or

11.6.2 manufacture any products in part or whole which are protected by Intellectual Property Rights licensed to the Client in Clause 11.1 for any purposes (other than as may be strictly necessary for the maintenance, running or repair of the work carried out as part of the Services,

any sub-licence granted by the Client in accordance with Clause 11.1 shall similarly apply these prohibitions to the sub-licensee of that computer software.

Confidentiality

11.7 For the purposes of this clause 11, the term "Disclosing Party" means a Party which discloses or makes available directly or indirectly its Confidential Information and "Recipient" means a Party which receives or obtains directly or indirectly Confidential Information.

11.8 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Agreement, the Recipient:

11.8.1 treats the Disclosing Party's Confidential Information as confidential and keeps it in safe custody (which is appropriate depending on the form in which such materials are stored and the nature of the Confidential Information contained in those materials);

11.8.2 does not disclose the Disclosing Party's Confidential Information to any other person except as expressly set out in this Agreement or without obtaining the owner's prior written consent;

11.8.3 not use or exploit the Disclosing Party's Confidential Information in any way except for the purposes anticipated under this Agreement; and

11.8.4 immediately notifies the Disclosing Party if it suspects unauthorised access, copying, use or disclosure of the Disclosing Party's Confidential Information.

11.9 The Recipient is entitled to disclose the Confidential Information of the Disclosing Party where:

11.9.1 disclosure is a requirement of applicable law, including any requirements for disclosure of Transparency Information;

11.9.2 the information is already in the possession of the Recipient without obligation of confidentiality prior to its disclosure by the Disclosing Party;

11.9.3 the information is given to the Recipient by a third party without obligation of confidentiality;

11.9.4 the information is already in the public domain at the time of disclosure otherwise than by a breach of this Agreement;

- 11.9.5 the information is independently developed without access to the other Party's Confidential Information; or
 - 11.9.6 the information is disclosed to the Serious Fraud Office where the Recipient has reasonable grounds to believe that the Disclosing Party is involved in activity that may be a criminal offence under the Bribery Act 2010.
- 11.10 The Supplier may disclose Confidential Information to the people who are directly involved in providing the Services and who need to know the information, and ensures that such people are aware of and comply with these obligations as to confidentiality.
- 11.11 In the event that any default, act or omission of any Supplier's Personnel causes or contributes (or could cause or contribute) to the Supplier breaching its obligations as to confidentiality under or in connection with this Agreement:
- 11.11.1 the Supplier takes such action as may be appropriate in the circumstances, including the use of disciplinary procedures in serious cases; and
 - 11.11.2 to the fullest extent permitted by its own obligations of confidentiality to any Supplier's Personnel, the Supplier provides such evidence to the Client as the Client may reasonably require (though not so as to risk compromising or prejudicing the case) to demonstrate that the Supplier is taking appropriate steps to comply with this clause, including copies of any written communications to and/or from Supplier's Personnel, and any minutes of meetings and any other records which provide an audit trail of any discussions or exchanges with Supplier's Personnel in connection with obligations as to confidentiality.
- 11.12 At the written request of the Client, the Supplier procures that those members of the Supplier's Personnel identified in the Client's request signs a confidentiality undertaking prior to commencing any services in accordance with this Agreement.
- 11.13 Nothing in this Agreement prevents the Client from disclosing the Supplier's Confidential Information:
- 11.13.1 on a confidential basis to any Crown Body for any proper purpose of the Client or of the relevant Crown Body;
 - 11.13.2 to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
 - 11.13.3 to the extent that the Client (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
 - 11.13.4 on a confidential basis to a professional adviser, contractor, consultant, supplier or other person engaged by the Client or any Crown Body (including any benchmarking organisation) for any purpose connected with this Agreement,
- and for the purposes of the foregoing, references to disclosure is on a confidential basis means disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Client under this clause 11.
- 11.14 Nothing in this clause prevents either Party from using any techniques, ideas or know-how gained during the performance of this Agreement in the course of its normal business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of IPR.

Photographs

11.15 Except as required to record the condition of the Client's Plant or the condition or activities on the Route, Site or Client's property for the purposes of delivering the Services the Supplier shall not at any time take any photograph of the Client's Plant or infrastructure, and shall take reasonable steps to ensure that no such photographs shall at any time be taken or published or otherwise circulated by any person employed by it, unless the Supplier has obtained the prior written consent of the Client. The Supplier shall take all necessary measures to prevent Supplier Personnel taking, publishing, releasing or otherwise circulating any photographs.

Comptroller &
Auditor
General

11.16 The Supplier shall and shall procure that its Sub-Suppliers shall provide such access to its or their books and records as may be required from time to time by the Comptroller and Auditor General of the National Audit Office for the purpose of their audit and examination of the accounts of the Client and its group companies, the Department for Transport and the consolidated set of financial statements for the UK public sector.

11.17 The Supplier shall allow the Client and the Client's internal and external auditors to inspect at any time within working hours, having given reasonable notice, the accounts and records which the Supplier is required to keep in accordance with this Agreement in order to assess compliance by the Supplier and/or its Sub-Suppliers with the Supplier's obligations under this Agreement.

12 Assignment and Sub-Contracting

Assignment
by Parties

12.1 The Client shall not assign charge or transfer this Agreement or any of its rights under it without the prior written consent of the Supplier (such consent not to be unreasonably withheld or delayed), provided that the Supplier's consent shall not be required where it is between the Client and:

12.1.1 any other body which substantially performs any of the functions that previously had been performed by the Client; or

12.1.2 its direct or indirect holding companies and its direct or indirect subsidiaries (within the meaning of s1159 Companies Act 2006).

12.2 The Supplier shall not assign charge or transfer this Agreement or any of its rights under it without the prior written consent of the Client (such consent not to be unreasonably withheld or delayed).

Sub-
Contracting
by Supplier

12.3 The Supplier shall not sub-contract any part of the Services without the prior written consent of the Client's Representative, which consent shall not be unreasonably withheld or delayed. If the Supplier sub-contracts any part of the Services, it is responsible for the performance of the Services as if it had not subcontracted such part of the Services.

12.3A The Supplier ensures that during the carrying out of the Services, it does not enter a sub-contract with:

12.3A.1 any sub-supplier that is on the debarment list on the basis of a mandatory exclusion ground within the meaning of the Procurement Act 2023 and associated regulations; or

12.3A.2 any sub-supplier that is on the debarment list on the basis of a discretionary exclusion ground within the meaning of the Procurement Act 2023 and associated regulations, unless the Supplier has obtained the Client's prior written consent to the appointment of the relevant proposed sub-supplier.

- 12.3B Unless agreed otherwise by the Client in writing, the Supplier includes in its subcontract with each Sub-Supplier provisions which:
- 12.3B.1 specify a period for payment of amounts due to the Sub-Supplier not greater than seven days after the final date for payment in this Agreement;
 - 12.3B.2 include in the amount due to the Sub-Supplier payment for work which the Sub-Supplier has completed from the previous Assessment Day up to the current Assessment Day for which an application has been submitted by the Supplier; and
 - 12.3B.3 allows the Client to publish the details of a late payment or non-payment if the time limits for payment in this clause 12.3B is exceeded.
- 12.3C The Supplier ensures that all Sub-Supplier are paid in accordance with these payment terms. If this does not happen, the Client can publish details of the late payment or non-payment.
- 12.3D The Supplier ensures that a term equivalent to clause 12.3B is included in each subcontract in its supply chain, such that each Sub-Supplier is obliged to include those terms in any of its own subcontracts in the supply chain for the delivery of this Agreement. References to the "Supplier" and "Sub-Supplier" in clause 12.3B are to be replaced with references to the respective sub-supplier who are parties to the relevant subcontract.
- 12.3E If requested by the Client, the Supplier provides a report to the Client setting out a summary of its compliance with clause 12.3B, such report to be certified by the Supplier's authorised representative as being accurate and not misleading.
- 12.4 No sub-contracting by the Supplier and no consent of the Client and nothing contained in this Agreement requiring the Supplier to sub-contract any work to or obtain any Plant from any person or persons named therein shall in any way relieve the Supplier from its responsibility for the due execution and completion of the Services in accordance with this Agreement.
- 12.5 The Supplier shall assess the amount due to a Sub-Supplier without taking into account the amount due to the Supplier under the notice issued by the Client under Clause 7.5 (Payment).
- 12.6 The Supplier shall include in the contract with each Sub-Supplier:
- 12.6.1 a period for payment of the amount due to the Sub-Supplier which is not greater than 28 days. The amount due shall include, but not be limited to, payment for work which the Sub-Supplier has completed from the previous assessment date up to the current assessment date in the contract;
 - 12.6.2 a provision which does not allow the Supplier to withhold retention or alternatively has a retention rate of 0%;
 - 12.6.3 a provision giving the Client a right to publish the Supplier's compliance with its obligations in Clause 12.6.1;
 - 12.6.4 insurance provisions that properly flow-down from Clause 9 (Indemnities and Insurance) and thereby do not provide for duplication of insurance cover; and
 - 12.6.5 a provision requiring the Sub-Supplier to include a clause to the same effect as this Clause 12.6 in any contracts it enters into wholly or substantially for the purpose of

Sub-letting
does not
relieve
Supplier

performing or contributing to the performance of the whole or any part of its subcontract with the Supplier; and

when requested by the Client, the Supplier shall provide reasonable documentary evidence to the Client that it is in compliance with its payment obligations under this Clause 12.6.

- 12.7 If the Supplier notifies the Client that the Supplier has failed to comply with its obligations under Clause 12.6.1, the Client can publish the details of the details of the non-compliance (including on government websites and in the press).

13 Protection of Personal Data

- 13.1 Unless the context otherwise requires, for the purposes of this Clause 13 the following definitions apply;

13.1.1 "Data Protection Legislation" means all applicable laws relating to data protection, the processing of personal data, privacy and/or electronic communications in force from time to time shall be interpreted and construed by reference to Data Protection Act 2018.

13.1.2 The terms controller, processor, processing/ process/ processed/ processes, data subject, and personal data shall be interpreted and construed by reference to Data Protection Act 2018.

13.1.3 Permitted Purpose means, with respect to a Party, the purposes of: (i) carrying out its obligations under this Agreement; (ii) exercising its rights under this Agreement; and (iii) complying with its obligations under applicable law (including Data Protection Act 2018).

13.1.4 "Security Incident" means (i) the unlawful or unauthorised processing of personal data; or (ii) any security incident affecting the personal data (including (without limitation) a personal data breach as defined in the Data Protection Act 2018).

- 13.2 The Parties agree that, for the purposes of Data Protection Legislation, each Party (to the extent it processes personal data) processes personal data as an independent controller in its own right. Nothing in this Agreement is intended to construe either Party as the processor of the other Party or as joint controllers with one another with respect to personal data.

- 13.3 Each Party:

13.3.1 shall comply with its obligations under Data Protection Legislation;

13.3.2 shall be responsible for dealing with and responding to data subject requests, enquiries or complaints (including any request by a data subject to exercise their rights under Data Protection Legislation) it receives, unless otherwise agreed between the Parties; and

13.3.3 shall promptly notify the other Party in writing of each Security Incident of which it becomes aware relating to the personal data to the extent the Security Incident is likely to affect the other Party.

- 13.4 Each Party warrants that it is not subject to any restriction (with the exception of those set out under Data Protection Legislation) which would prevent or restrict it from disclosing or transferring personal data to the other Party in accordance with the terms of this Agreement including without limitation for the purposes of Clause 11.15 (Copyright, Intellectual Property, Confidentiality, Photographs and C&AG).

- 13.5 Without limiting Clause 13.3.1, if a Party (the Disclosing Party) provides personal data to the other Party (the Receiving Party), it shall ensure that it has provided all necessary information to, and obtained all necessary consents from, the data subjects of the personal data, in each case to enable the Disclosing Party to disclose the personal data to the Receiving Party and for the Receiving Party to use that personal data for the Permitted Purposes, in each case in accordance with Data Protection Legislation.
- 13.6 In relation to the personal data it receives from the Disclosing Party, each Party:
- 13.6.1 at all times shall process the personal data in a manner that ensures appropriate security of the personal data, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate technical and organisational measures; and
- 13.6.2 shall ensure that, at a minimum, the measures required under Clause 13.6.1 meet the standard required by Data Protection Legislation.
- 13.7 The Supplier shall complete any action required under Data Protection Legislation (including identifying appropriate lawful bases for the required processing of personal data and providing the subjects of personal data with appropriate fair processing information) to ensure that it can disclose and transfer personal data to and allow and facilitate access to personal data for the purposes of Clause 11.15 (Copyright, Intellectual Property, Confidentiality, Photographs and C&AG).

14 Employment Protection and TUPE

Notwithstanding anything to the contrary elsewhere in this Agreement:

- TUPE Indemnity
- 14.1 the Supplier shall be responsible for and shall indemnify and keep indemnified the Client and any successor supplier from and against all and any costs, claims, expenses, damages, demands, actions, losses and liabilities arising out of or in connection with any claim in respect of any person which arises or is alleged to arise by reason of the operation of and/or for failure to inform and consult under the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended or re-enacted from time to time ("**TUPE**");
- Employee Data
- 14.2 in the last 12 months prior to completion of the Services under the last Contract Order or after notice of termination of the employment of the Supplier under this Agreement has been given in accordance with Clause 19, within 28 days of the Client's request, the Supplier shall (where TUPE is likely to apply) provide the Client with such information as the *Client* may reasonably require for all persons who are, who have been, or who may be at any time concerned with the Services or any part of them in a suitably anonymised format in order to comply with Data Protection Legislation including:
- 14.2.1 their job title;
- 14.2.2 job description;
- 14.2.3 basic salary, bonus and all other emoluments and benefits;
- 14.2.4 period of continuous employment;
- 14.2.5 the percentage of the time that they have worked on this Agreement;
- 14.2.6 details of any agreements entered into with employee representative bodies in relation to such persons;

- 14.2.7 details of all training and competency courses attended and certificates or qualifications obtained;
- 14.2.8 place of work;
- 14.2.9 all relevant contractual and non-contractual termination or severance arrangements;
- 14.2.10 notice periods;
- 14.2.11 contractual holiday entitlements;
- 14.2.12 copy of employment contract or applicable standard terms and employee handbook;
- 14.2.13 immigrant status and right to work documentation;
- 14.2.14 information on any disciplinary or grievance procedure taken against or by any person within the preceding 2 years;
- 14.2.15 information about any tribunal claims in the preceding 2 years or whether there are reasonable grounds to believe a claim may be brought; and
- 14.2.16 such other requirements as the Client may reasonably require

(altogether the “**Employee Data**”). The Client will, subject to compliance with any Data Protection Legislation, be permitted to disclose any information provided to it under this sub-clause in summary and/or anonymised form to any person who has been invited to tender for the provision of the Services (or similar services) and to any successor supplier and successor supplier’s sub-suppliers;

- 14.3 in the last 12 months prior to completion of the Services under the last Contract Order or after notice of termination of the employment of the Supplier under this Agreement has been given in accordance with Clause 19 (Termination), the Supplier shall (and shall procure that any Sub-Supplier shall) provide to the people engaged in the performance of this Agreement, written contracts of employment or statements of terms of employment, in either case complying with the requirements of Section 1 of the Employment Rights Act 1996, and retain copies of such documents together with such other documentation and PAYE records as may reasonably be required by the Client (“**Personnel Records**”) and shall (where TUPE is likely to apply) within 28 days of the Client’s request, whether during the performance of this Agreement or following the end of this Agreement (whether lawfully or otherwise) deliver up to the Client or to such person as the Client may nominate, the Employee Data, such copies of the Personnel Records as may be required by the Client and, to the extent not otherwise provided, any employee liability information pursuant to and in accordance with Regulation 11 of TUPE. The Client may communicate such information to persons intending to tender to execute services of the nature of the Services;

- 14.4 the Supplier shall not (and shall procure that any Sub-Supplier shall not) (where TUPE is likely to apply) in the last six months prior to completion of the Services under the last Contract Order or after notice of termination of the employment of the Supplier under this Agreement has been given in accordance with Clause 19, without the prior written permission of the Client:

- 14.4.1 vary or purport or promise to vary (in the employee’s favour), the terms of the contract of employment of any person engaged wholly or principally in the execution of the Services;

Personnel
Records

Contracts:
Variation

- 14.4.2 terminate or give notice to terminate the employment or engagement of any person engaged wholly or principally in the execution of the Services;
- 14.4.3 deploy or assign any person to perform the Services who is not already doing so with the effect that the number of persons engaged wholly or principally in the execution of the Services increases;
- 14.4.4 increase or reduce to any significant degree the proportion of working time spent on the Services by any person engaged wholly or principally in the execution of the Services; or
- 14.4.5 introduce any new contractual or customary practice (including any payments on termination of employment) applicable to any person engaged wholly or principally in the execution of the Services;

New employees

14.5 the Supplier shall not (and shall procure that any Sub-Supplier shall not) (where TUPE is likely to apply), without the prior written consent of the Client, create or grant, or promise to create or grant, terms or conditions of employment for any new employee engaged wholly or principally in the execution of the Services if and to the extent that such terms or conditions are materially different to the terms or conditions of employment of equivalent or nearest equivalent existing employees (which themselves comply with sub-clause 14.4) at the date of commencement of employment of such new employee;

Regulation 13

14.6 the Supplier shall (and shall procure that any Sub-Supplier shall) (where TUPE is likely to apply) at all times comply with its information and consultation obligations under Regulation 13 of TUPE; and

TUPE indemnity

14.7 the Supplier shall indemnify and keep indemnified the Client and any successor supplier against all costs, claims, expenses, damages, demands, actions, losses and liabilities arising out of or in connection with:

14.7.1 any act, default or omission of the Supplier or any Sub-Supplier in respect of any person who was or is employed or engaged by the Supplier or any Sub-Supplier;

14.7.2 the employment or termination of employment of any person engaged wholly or principally in the execution of the Services up to and including the date of completion of the Services under the last Contract Order or termination of the employment of the Supplier under this Agreement,

14.7.3 any breach by the Supplier or any Sub-Supplier of its obligation to provide employee liability information to the Client or any successor supplier in accordance with Regulation 11 of TUPE; and/or

14.7.4 any breach by the Supplier of sub-clauses 14.4, 14.5 and/or 14.6;

and, despite anything else in this Agreement, such a successor supplier can directly enforce the indemnity in its favour provided for by sub-clauses 14.1 and 14.7.

15 Client's Facilities

Property in Facilities

15.1 All of the Client's Facilities or other property issued or supplied in connection with this Agreement by, or on behalf of the Client, shall remain the property of the Client and subject to Clause 4.6 shall only be used by the Supplier for the purposes of this Agreement.

Availability of Facilities

15.2 The Client shall make available to the Supplier the Client's Facilities at the times and subject to the conditions set out in the Preliminaries and subject to any temporary disrepair or

mechanical breakdown. The Supplier shall return the same to the Client in the condition in which it was supplied (fair wear and tear excepted).

- No liens 15.3 Neither the Supplier, any Sub-Supplier or any other person, shall have a lien on any of the Client's Facilities or on any other property and the Supplier shall take all necessary steps to ensure that the title of the Client and the exclusion of any such lien are brought to the notice of all Sub-Suppliers and other persons dealing with the same.

16 Breakdowns and notice of accidents

- Breakdowns 16.1 If the Plant breaks down on the Client's rail network and requires haulage to remove it to an appropriate Stabling Point, the Supplier shall be responsible for removing the Plant at all times.

If the Plant breakdown is due to the Supplier's negligence the Supplier shall be responsible for all such costs. If the Plant breakdown is not due to the Supplier's negligence the Supplier shall claim for all costs incurred for removing the Plant from the rail network.

- Accidents 16.2 If the Plant is involved in any accident resulting in injury to persons or damage to property, immediate notice must be given to the Client's Representative by telephone and confirmed in writing. In respect of any claim, no admission, offer, promise of payment or indemnity, shall be made by the Client without the Supplier's consent in writing.

- 16.3 The Supplier shall, at its own cost, support and participate in any incident or accident investigation initiated by the Client, HMRI or any other regulatory body. The Supplier shall provide reasonable access to all internal documents relating to such incidents.

17 Force Majeure

- Force Majeure 17.1 If either Party to the Agreement is prevented from or delayed in performing any of its obligations under the Contract by Force Majeure, that Party may notify the other Party in writing forthwith of the circumstances constituting the cause of delay and specify the obligations, the performance of which is thereby delayed or prevented. Notification shall be made within seven days of the commencement of the relevant event constituting the cause of the delay. Failure by the Supplier to give the requisite notice shall preclude him from claiming at any subsequent stage relief from their obligations under the Agreement. The Parties shall agree the date of cessation and any subsequent resumption of the affected part of the Agreement.

- 17.2 If such notice under Clause 17.1 is given by the Supplier by reason of Force Majeure, the Client shall not be liable to make any payment to the Supplier for the relevant Services in respect of the period during which the Supplier is unable to perform its obligations except as may be specified in the Pricing Document.

- 17.3 The Supplier shall at all times use reasonable endeavours at its own cost to minimise any delay in the performance of its obligations under the Contract whatever may be the cause of such delay.

- 17.4 If performance of the Services is substantially prevented for more than sixty (60) days by virtue of any event of Force Majeure which has been notified in accordance with Clause 17.1 (Force Majeure), then either Party may terminate the employment of the Supplier under this Agreement under Clause 19.4 (Termination).

18 Suspension

Suspension

- 18.1 The Supplier shall, on the written instructions of the Client's Representative, suspend the performance of the Services or any part thereof for such time and in such manner as the Client's Representative may require.
- 18.2 Where the performance of the Services or any part thereof has been suspended under Clause 18.1 and the Services are to be resumed, the Client's Representative shall grant the Supplier a reasonable period of time in order to resume performance of such Services.
- 18.3 Unless any suspension is:
- 18.3.1 provided for in any provision of this Agreement other than Clause 18.1, or
 - 18.3.2 a consequence of some default of, or breach by, the Supplier of any provision of this Agreement,

the Supplier shall be entitled to reimbursement of the sums which would otherwise have fallen due under the Pricing Document less a reasonable deduction for the cost of fuel, consumables, discretionary overtime and other avoidable costs assessed by the Client's Representative following the principles set out in Clause 6. The Supplier shall take reasonable steps to reduce avoidable costs during any suspension.

- 18.4 In the event of suspension, the Supplier:
- 18.4.1 shall comply with the Client's Representative's instructions with regard to stabling of Plant; and
 - 18.4.2 shall not remove any Plant from the Contract Area or from any Stabling Point or other location without the written permission of the Client's Representative. Such permission shall not be unreasonably withheld.
- 18.5 If the Supplier exercises its right under section 112 of the Housing Grants, Construction and Regeneration Act 1996, as amended by the Local Democracy, Economic Development and Construction Act 2009, (if applicable) to suspend performance of its obligations under this Agreement, the Supplier shall be entitled to a reasonable amount in respect of costs and expenses reasonably incurred by it as a result of the exercise of that right.

19 Termination

Supplier's
breach/insolve
ncy

- 19.1 If the Supplier:
- 19.1.1 shall be in material breach of any of the provisions of this Agreement;
 - 19.1.2 becomes liable to the Client for amounts under this Agreement which in total equal or exceed the Aggregate Liability Cap;
 - 19.1.3 or the Guarantor becomes Insolvent; or
 - 19.1.4 is deemed to have committed a material breach of this Agreement that is not capable of correction as described in the Corporate Social Responsibility Schedule,
- then the Client may, by notice to terminate forthwith the employment of the Supplier under this Agreement.

- 19.1A The Client may, by notice to terminate forthwith the employment of the Supplier under this Agreement if:

Termination for
Procurement
Act breaches

- 19.1A.1 in accordance with section 78, and/or section 79 (where applicable), of the Procurement Act 2023, and provided that the requirements of section 78(7) of the Procurement Act 2023 have been met:
 - 19.1A.1.1 the Client considers that this Agreement was awarded or modified in material breach of the Procurement Act 2023 or regulations made under it;
 - 19.1A.1.2 the Supplier has, since the award of this Agreement, become an excluded supplier or excludable supplier (including by reference to an associated person) and provided that the conditions in sections 78(8) (where applicable) of the Procurement Act 2023 have been met;
 - 19.1A.1.2 any Sub-Supplier has, since the award of this Agreement, become an excluded supplier or excludable supplier as set out in section 57 of the Procurement Act 2023 and provided that the conditions in section 78(3) to 78(8) of the Procurement Act 2023 have been met,
- 19.1A.2 any Sub-Supplier has, since the award of this Agreement, become an excluded supplier or excludable supplier as defined in section 57 of the Procurement Act 2023, provided that prior to exercising its right of termination under this clause 19 the Client:
 - 19.1A.2.1 has notified the Supplier of its intention to terminate under this clause 19, and why the Client has decided to terminate this Agreement;
 - 19.1A.2.2 has given the Supplier reasonable opportunity to make representations about whether this clause 19.1A.2 applies and the Client's decision to terminate and has given the Supplier a reasonable opportunity to end its subcontract with the excluded or excludable supplier, and if necessary, find an alternative Sub-Supplier,
- 19.1A.3 the Supplier has failed to provide notification under clause 38.1 as soon as reasonably practicable after the Supplier becomes aware that an exclusion ground within the Procurement Act 2023 and any associated regulations does or may apply to the Supplier;
- 19.1A.4 the Supplier has failed to provide notification under clause 38.1 as soon as reasonably practicable after the Supplier becoming aware of any changes to the Supplier's associated persons within the meaning of the Procurement Act 2023; and/or
- 19.1A.5 any notification or information provided by the Supplier under clause 38.1, 38.2 and/or 38.3 is incomplete, inaccurate or misleading.

Termination at will

19.2 The Client may, in addition to any other right it may have, with 30 days notice to the Supplier forthwith terminate the employment of the Supplier under this Agreement.

19.3 The Supplier may terminate its employment under this Agreement by written notice to the Client if the Client has not paid any undisputed amounts within 90 days of them falling due.

- 19.4 If each Party becomes entitled to terminate the employment of the Supplier under this Agreement under Clause 17.4 in relation to Force Majeure, then either Party may, by notice to the other, forthwith terminate the employment of the Supplier under this Agreement.
- 19.5 Without limiting the Client's rights, if the Client is entitled to terminate the employment of the Supplier under this Agreement for a reason stated in this Clause 19, the Client may in its discretion opt to terminate one or more Contract Orders for the same reason (whether or not the reason relates to the Contract Order which is proposed to be terminated) without terminating the employment of the Supplier under this Agreement. After a notification to terminate a Contract Order has been issued, the Supplier shall not perform any Services in respect of that Contract Order but shall otherwise continue to perform the Services.

20 Consequences of Termination

20.1 If the Client, in exercise of the powers contained in Clause 19.1 (Termination) or 19.1A (Termination for Procurement Act breaches) shall terminate the Supplier's employment under this Agreement the following provisions shall take effect:

- 20.1.1 the payment of any sum of money that may then be due or accruing due from the Client to the Supplier shall be suspended;
- 20.1.2 the Supplier shall pay to the Client the Client's reasonable losses and expenses due to the termination, but the Supplier shall receive credit for any sum the payment of which is suspended under Clause 20.1.1;
- 20.1.3 the Client may hire any persons in the employment of the Supplier and the Client may enter upon any premises under the control of the Supplier and take possession of all Client's Plant and equipment which are on such premises, and may purchase or do anything requisite for the further execution of the Services, or may employ other suppliers to do the same, and the Supplier shall at its cost provide reasonable support to the Client to facilitate such further execution of the Services; and
- 20.1.4 if the Client (acting reasonably) expresses a wish to the Supplier to purchase any of the Supplier's Plant (whether or not used in the performance of the Services) the Supplier shall offer such Plant for sale to the Client at a reasonable price.

20.2 If the Client, in the exercise of the powers contained in Clause 19.2 (Termination), or the Supplier, in the exercise the powers contained in Clause 19.3 (Termination), shall terminate the Supplier's employment under this Agreement, the amount due to the Supplier shall be calculated by including:

- 20.2.1 the value of work executed up to the date of termination calculated in accordance with the provisions of the Pricing Documents and relevant Contract Orders;
- 20.2.2 the amounts payable in accordance with the provisions of the Pricing Documents in respect of the Services so far as the work or service comprised therein has been carried out or performed and a proper proportion of any such items which have been partially carried out or performed;
- 20.2.3 the cost of any Plant or equipment reasonably ordered specifically for the Services, which were not intended to be used by the Supplier on any contracts other than this Agreement and which have been delivered to the Supplier or of which the Supplier is legally liable to accept delivery (such Plant or equipment becoming the property of the Client upon such payment being made to the Supplier);

Payment
following
breach/insolve
ncy

- 20.2.4 a sum being the amount of any expenditure reasonably incurred by the Supplier in the expectation of completing the whole of the Services in any Contract Order and/or Services not then completed insofar as such expenditure has not been recovered by any other payments referred to above; and
- 20.2.5 the reasonable cost of removal of all Supplier's Plant and equipment from the Routes, Sites or Client's property.
- 20.3 If either Party, in the exercise of the powers contained in Clause 19.4, shall terminate the Supplier's employment under this Agreement, the Supplier shall be paid in accordance with Clauses 20.2.1, 20.2.2 and 20.2.3.
- 20.4 The Supplier shall not be entitled to payment of any other loss which is not provided for in this Clause 20 (including, without limitation, loss of profit) and/or damage arising from such termination.
- 20.5 If the Client terminates the employment of the Supplier under this Agreement because the Supplier becomes Insolvent, and a notified sum or amount due under a pay less notice has not been made at the date of the Client's termination notice, and the Insolvency occurred after the last date on which the Client could have notified the Supplier in accordance with this Agreement that it intends to pay less than the notified sum, the Client shall not be required to make the payment.
- 20.6 Within [13] weeks after any termination, the Client carries out an assessment of the amount due from the Supplier to the Client, or due from the Client to the Supplier (as the case may be), and provides the Supplier with details of the assessment. The payment due date for such amount is [21] days after the date of such assessment. The final date for payment of such amount is [7] days after the payment due date. The Client shall issue to the Supplier a notice stating the sum which it considers to be due to the Supplier and the basis of the calculation of that sum (even if that sum is zero) on or before 5 days after the payment due date.

21 Third Party Rights

- 21.1 Subject to Clauses 14.1 and 14.7 (Employment Protection and TUPE) but otherwise notwithstanding anything to the contrary contained elsewhere in this Agreement, nothing in this Agreement is intended to confer on any person any right to enforce any term of this Agreement which that person would not have had but for the provisions of the Contracts (Rights of Third Parties) Act 1999.

22 Notices and other Communications

Each communication under these Conditions is sent by e-mail unless it is not practicable to do so. Each communication which the Agreement requires has effect when it is received in a form that can be read, copied and recorded at the last address notified by the recipient for receiving communications.

Provided that the preceding paragraph shall not apply to a notice to break the Term on a Break Date, notice of termination, a notice of suspension or a notice to refer a dispute, in respect of which the following table sets out the method by which such communications may be served under this Agreement and the respective deemed time and proof of service:

<u>MANNER OF DELIVERY</u>	<u>DEEMED TIME OF SERVICE</u>	<u>PROOF OF SERVICE</u>
Email	9.00am on the first working day after sending	Dispatched as a pdf attachment to an e-mail to the correct e-mail address without any error message.
Personal delivery	On delivery, provided delivery is between 9.00am and 5.00pm on a working day. Otherwise, delivery will occur at 9.00am on the next working day.	Properly addressed and delivered as evidenced by signature of a delivery receipt
Prepaid, Royal Mail Signed For™ 1st Class or other prepaid, next working day service providing proof of delivery.	At the time recorded by the delivery service, provided that delivery is between 9.00am and 5.00pm on a working day. Otherwise, delivery will occur at 9.00am on the same working day (if delivery before 9.00am) or on the next working day (if after 5.00pm).	Properly addressed prepaid and delivered as evidenced by signature of a delivery receipt

This clause does not apply to the service of legal proceedings or any documents in any legal action which is subject to the rules of a tribunal.

Adjudicator

23 Dispute Resolution

23.1 Any dispute or difference arising under or in connection with this Agreement, may be referred to adjudication by the Adjudicator in accordance with the following provisions:

23.1.1 the Scheme for Construction Contracts SI No. 649 of 1998 shall apply; and

23.1.2 subject to Clause 3.3 (Contract Orders) the Adjudicator's decision is binding until the dispute or difference is finally determined by the Courts as provided in Clause 23.3.

23.2 The Adjudicator shall not be liable for anything done or omitted in the discharge or purported discharge of its functions as Adjudicator unless the act or omission is in bad faith, and any employee or agent of the Adjudicator is similarly protected.

23.3 Disputes and differences between the Parties arising out of or in relation to this Agreement shall, subject to Clause 23.1, be referred to the exclusive jurisdiction of the Courts of England and Wales. This Agreement shall be governed by and construed in accordance with the laws of England and Wales.

Adjudicator not liable

Courts & jurisdiction

24 Liability for Railway Costs

For the purposes of this paragraph:

24.1 "Track Access Agreement" means any agreement (excluding Freight Access Agreements) entered into between the Client and any other party and incorporating the Network Code.

Railway Costs

- 24.2 “Freight Access Agreement” means any agreement (excluding Track Access Agreements) entered into between the Client and any other party for non-passenger services and incorporating the Network Code.
- 24.3 “Network Code” means the document entitled “Network Code” dated 12 July 2017, as amended and modified from time to time.
- 24.4 Notwithstanding any other provision of this Agreement, the liability of the Supplier to compensate the Client in respect of any sums payable by the Client pursuant to Schedules 4 and 8 of any Track Access Agreement or the equivalent provisions of any Freight Access Agreement (“**Railway Costs**”) arising under or in connection with this Agreement (whether arising in contract, tort (including negligence), delict or otherwise at law), to the extent permitted by law, shall not exceed in aggregate the sum stated in the Contract Data (the “**Railway Costs Cap**”).

25 Security

- 25.1 The Supplier shall take reasonable steps and all steps required by the Agreement to prevent unauthorised persons being admitted to the Routes, Sites and the Client’s Facilities. The Supplier shall be responsible for ensuring that no person employed on its behalf trespasses beyond the agreed limits of any specified working areas or access routes.
- 25.2 Supplier Personnel shall carry an Client’s pass whilst they are on the parts of the Client’s property affected by the Services. The Supplier shall maintain a list of names and addresses of all persons who are or may be at any time concerned with the Services or any part thereof, specifying the capacities in which they are so concerned, and shall supply such list to the Client’s Representative for acceptance, giving such other particulars as the Client’s Representative may reasonably require. On acceptance, the Client shall issue the passes to the Supplier. Each pass shall be returned to the Client when the person no longer requires access to that part of the Client’s property affected by the Services or after the Client has given notice under Clause 5.6 that the person is not to be allowed onto a Route, Site or the Client’s property.

26 Variations to this Agreement

No variation to the terms of this Agreement shall be effective unless it is made in writing and has been signed on behalf of each Party by its duly authorised representative.

27 Entire Agreement

This Agreement and the documents referred to in it constitute the entire agreement and understanding of the Parties and supersede any previous agreement between the Parties relating to the subject matter of this Agreement.

28 Relief from Actions by the Supplier’s Group

The Supplier shall not be able to claim any relief from the Client to the extent that the Supplier is prevented from delivering its obligations under this Agreement by any action or inaction of the Supplier or any of the companies within the Supplier’s group of companies.

29 Waiver

Security

Entire Agreement

Relief from Actions

Waiver

The failure or delay by any Party to enforce at any time or for any period any of the terms and conditions of the Agreement shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions of the Agreement.

30 Consents

The Supplier shall obtain and maintain all necessary consents required to perform the Services at the cost of the Supplier. Consents shall include those necessary for depots, sidings and other facilities required for the provision of the Services (other than Stabling Points owned by the Client).

31 Compliance

The Supplier shall comply with the Corporate Social Responsibility Schedule.

32 Sharing of Information

32.1 The Supplier acknowledges that the Client is subject to the requirements of the FOIA, the EIRs, the Procurement Act 2023 and Procurement Policy Note. The Supplier:

32.1.1 provides all necessary assistance and cooperation as reasonably requested by the Client's Representative to enable the Client to comply with its obligations under the FOIA, EIRs and the Procurement Act 2023;

32.1.2 transfers to the Client's Representative all Requests for Information that it receives as soon as practicable and in any event within two working days of receiving the Request for Information;

32.1.3 provides the Client's Representative with a copy of all information in its possession or power (in a form specified by the Client's Representative) which is needed so the Client can:

- (i) publish the Transparency Information; and
- (ii) comply with any Request for Information,

within a reasonable timetable specified by the Client's Representative and in any event, in the case of a Request for Information, to enable the Client to respond to the Request for Information within five working days (or such other period as the Client's Representative may specify) and procures that its Sub-Suppliers do likewise.

32.2 The Supplier does not respond directly to a Request for Information unless authorised to do so by the Client's Representative.

32.3 The Client:

32.3.1 takes reasonable steps to notify the Supplier of a Request for Information acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA to the extent that it is permissible and reasonably practical for it to do so; and

32.3.2 acting reasonably seeks to apply the relevant exemption set out in the FOIA, the EIRs, any Procurement Policy Note or section 94 of the Procurement Act 2023 and any regulations published under it, to any Commercially Sensitive Information,

but (notwithstanding any other provision in this Agreement) the Client is responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure

33 Information Security

- 33.1 The Supplier shall comply with the Client's security policies and procedures including
- NR/L1/SCT/002 Cyber security and resilience for digital systems policy; and
 - Supplier (Supply Chain) Security Policy.

34 Not Used

35 Not Used

36 Not Used

37 Limits of Liability

37.1 Subject to Clause 37.2, the aggregate liability of the Supplier under or connection with this Agreement (whether arising in contract, tort (including negligence) delict or otherwise at law), to the extent permitted by law, shall be limited to the amount stated in the Contract Data (the "**Aggregate Liability Cap**"). The Railway Costs Cap is a sub-cap to the Aggregate Liability Cap.

37.2 No exclusion or limit of liability in this Agreement shall apply to:

- (a) any liability in respect of death or personal injury resulting from a negligent act or omission or breach of statutory duty by the Supplier or any person for whom the Supplier is responsible;
- (b) any losses directly caused by the fraud of the Supplier;
- (c) any liability of the Supplier under:
 - (i) Clause 11.1 to 11.6 (Copyright, Intellectual Property, Confidentiality, Photographs and C&AG);
 - (ii) Clause 11.7 to 11.16 (Copyright, Intellectual Property, Confidentiality, Photographs and C&AG);
 - (iii) Clause 13 (Protection of Personal Data); or
 - (iv) Clause 14 (Employment Protection and TUPE);
- (d) any liability in respect of which the Supplier is entitled to recovery (or would be entitled to recovery but for its own default) under the terms of insurances required to be maintained in accordance with this Agreement, which shall be subject to the limit of liability in Clause 37.3.

37.3 Insured losses;

The aggregate liability of the Supplier under this Agreement (whether arising in contract, tort (including negligence) or otherwise at law) in respect of which the Supplier is entitled to recovery (or would be entitled to recovery but for its own default) under the terms of

insurances required to be maintained in accordance with this Agreement shall be limited to the minimum amount of the relevant insurance required to be maintained in accordance with the terms of this Agreement.

37.4 Other Losses;

Subject to Clause 37.2, in no event shall the Supplier be liable to the Client, including by way of indemnity, for any:

- (a) loss of profits;
- (b) loss of business or production;
- (c) loss of revenue;
- (d) loss of or damage to goodwill;
- (e) loss of savings (whether anticipated or otherwise); and/or
- (f) any indirect, special or consequential loss or damage,

Provided that nothing in this Clause 37.4 shall exclude the Supplier's liability for Railway Costs or the Supplier's liability under Clause 10 (Claims Handling Provisions).

37.5 Mitigation;

Each Party shall use reasonable endeavours to mitigate any loss or damage suffered arising out of or in connection with this Agreement, including any losses for which the relevant Party is entitled to bring a claim against the other Party pursuant to the indemnities in this Agreement.

37.6 Notice of third party claims;

With the exception of any third party claim arising in relation to the indemnity in Clause 9.1, the Client shall, as soon as reasonably practicable after receiving notice of a third party claim qualifying for an indemnity under this Agreement, give written notice to the Supplier specifying details of the third party claim.

38 Procurement Act exclusions

38.1 During the course of the Services the Supplier shall notify the Client as soon as reasonably practicable if:

38.1.1 the Supplier considers that an exclusion ground within the Procurement Act 2023 and any associated regulations applies to the Supplier, including where the Supplier is put on the debarment list or becomes an excluded or excludable supplier by virtue of any associated persons or sub-supplier where information relating to such was provided under section 28 of the Procurement Act 2023;

38.1.2 there are any changes to the Supplier's associated persons within the meaning of the Procurement Act 2023.

38.2 If the Supplier notifies the Client in accordance with clause 38.1 that it considers an exclusion ground applies to the Supplier, then the Supplier must promptly provide any information the Client reasonably requests in relation to the notification, including information to support an assessment of whether the circumstances giving rise to the exclusion event are continuing or likely to occur again.

38.3 If the Supplier notifies the Client in accordance with clause 38.1 that there are any changes to the Supplier's associated persons, the Supplier must promptly provide any information reasonably requested by the Client in relation to the change to the Client's associated persons, including any information set out in the Procurement Regulations 2024.

CORPORATE SOCIAL RESPONSIBILITY SCHEDULE

Reference to “Supplier” is deemed to mean “Contractor” or “Consultant” as relevant to the contract of which this schedule forms a part.

Reference to “Buyer” is deemed to mean “Client”, “Employer”, “Hirer” or “Purchaser” as relevant to the contract of which this schedule forms a part.

1. What we require from our Suppliers

- 1.1 The Buyer requires the Supplier and its sub-contractors to comply the Supplier Code of Conduct and any updates thereof.
- 1.2 In addition, the Buyer requires the Supplier and its sub-contractors to comply with the standards set out below.

2. Not used

3. Employment Law

The Supplier must perform its obligations meeting the requirements of all applicable law regarding employment.

4. Modern Slavery

The Supplier:

- 4.1 shall not use, nor allow its sub-contractors to use forced, bonded or involuntary prison labour;
- 4.2 shall not require any Supplier staff or sub-contractor staff to lodge deposits or identity papers with the employer of such staff and shall be free to leave their employer after reasonable notice (for the purpose of this Schedule, “staff” shall include directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any sub-contractor (as applicable), engaged in the performance of the Supplier’s obligations under the contract);
- 4.3 warrants and represents that it has not been convicted of any slavery or human trafficking offences anywhere around the world;
- 4.4 warrants that to the best of its knowledge it is not currently under investigation, inquiry or enforcement proceedings in relation to any allegation of slavery or human trafficking offences anywhere around the world;
- 4.5 shall make reasonable enquires to ensure that its officers, employees and sub-contractors have not been convicted of slavery or human trafficking offences anywhere around the world;
- 4.6 shall have and maintain throughout the term of the contract its own policies and procedures to ensure its compliance with the Modern Slavery Act 2015 and include in its contracts with its sub-contractors anti-slavery and human trafficking provisions;
- 4.7 shall implement due diligence procedures to ensure that there is no slavery or human trafficking in any part of its supply chain performing obligations under the contract;
- 4.8 shall, when requested by the Buyer, prepare and deliver to the Buyer, an annual slavery and human trafficking report (in respect of which a statement under section 54 of the Modern Slavery Act 2015 would be sufficient) setting out the steps it has taken to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of its business with its annual certification of compliance with this Paragraph 4;
- 4.9 shall not use, nor allow its employees or sub-contractors to use physical abuse or discipline, the threat of physical abuse, sexual or other harassment and verbal abuse or other forms of intimidation of its employees or subcontractors;
- 4.10 shall not use or allow child or slave labour to be used by its subcontractors; and
- 4.11 shall report the discovery or suspicion of any slavery or trafficking by it or its subcontractors to the Buyer and Modern Slavery Helpline and relevant national or local law enforcement agencies.

5. Real Living Wage

- 5.1 “Real Living Wage” means the separate basic hourly rates for London and the rest of the UK, as applicable, as set by the Living Wage Commission (before tax, other deductions and any increase for overtime), as may be revised from time to time.

- 5.2 The Supplier shall and shall also use reasonable endeavours to procure that its sub-contractors shall:
- 5.2.1 ensure that none of its staff or the staff of its subcontractor's engaged in the performance of the contract in London and the rest of the UK and who would also satisfy the eligibility criteria set by the Living Wage Foundation (or any replacement thereof) is paid an hourly wage (or equivalent of an hourly wage) less than the Real Living Wage; and
 - 5.2.2 co-operate and provide all reasonable assistance to the Buyer in monitoring the effect of the Real Living Wage.
- 5.3 Unless stated below, if the Real Living Wage increases during the term of the contract, the Supplier shall not be entitled to adjust the charges and the parties agree and acknowledge that any increases in the Real Living Wage anticipated during the term of the contract have been factored into the Charges.

6. Tax

- 6.1 The Supplier must not breach any tax or social security obligations and must enter into a binding agreement to pay any late contributions due, including where applicable, any interest or any fines. The Buyer cannot terminate the contract where the Supplier has not paid a minor tax or social security contribution.
- 6.2 Where the Supplier or any Supplier staff are liable to be taxed or to pay national insurance contributions in the UK relating to payment received under the contract, the Supplier must both:
- 6.2.1 comply with the IR35 Legislation, all other statutes and regulations relating to income tax, and the national insurance contributions; and
 - 6.2.2 indemnify the Buyer against any IR35 Legislation and any other income tax, national insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made during or after the contract term in connection with the provision of the contract deliverables by the Supplier or any of the Supplier staff.
- 6.3 If any of the Supplier staff are Workers who receive payment relating to the contract deliverables, then the Supplier must at the Buyer's request in respect of each such Worker:
- 6.3.1 procure that the Worker provides information which demonstrates compliance with Paragraph 6.2.1, or why those requirements do not apply, the Buyer can specify the information the Worker must provide and the deadline for responding;
 - 6.3.2 terminate the Worker's contract if the Worker fails to provide the information requested by the Buyer within the time specified by the Buyer; and
 - 6.3.3 terminate the Worker's contract if the Worker provides information which the Buyer considers isn't good enough to demonstrate compliance with Paragraph 6.2.1 or confirms that the Worker is not in compliance with those requirements.
- 6.4 If it is specified by the Buyer, that the services provided through the contract are assessed by the Buyer to fall under IR35 Legislation then:
- 6.4.1 the Supplier shall comply with the reasonable instructions and requests for information from the Buyer in respect of the IR35 Legislation;
 - 6.4.2 the Supplier shall advise the Buyer of any relevant changes in the status of Supplier staff;
 - 6.4.3 the Supplier shall supply all the information required, and to any specified time, for the Buyer to report to the Department for Transport and HM Treasury as to compliance with the IR35 Legislation including the number of workers affected; and
 - 6.4.4 the Buyer shall provide all reasonably requested information within a reasonable timescale to support the Supplier in its compliance with the IR35 Legislation.
- 6.5 Failure by the Supplier to comply with this Paragraph 6 shall be deemed to be a material breach of the contract that is not capable of correction, and the Buyer can immediately terminate the contract.
- 6.6 For the purpose of this Paragraph 6, the following capitalised terms shall have the meaning given to such term below:
- 6.6.1 "IR35 Legislation" means the:

- a) Income Tax (Earnings and Pensions) Act 2003 (ITEPA), Social Security Contributions and Benefits Act 1992 (SSCBA) and all other related statutes and regulations including the Finance Act 2017; and
 - b) off-payroll rules requiring individuals who work through their company pay the same tax and national insurance contributions as an employee; and
- 6.6.2 “Worker” means any individual that personally performs, or is under an obligation personally to perform services for the Buyer.

7. Preventing fraud, bribery and corruption

- 7.1 The Supplier warrants and represents that neither it nor, to the best of its knowledge the Supplier staff, have committed a Prohibited Act prior to the commencement of the contract or been subject to an investigation relating to a Prohibited Act.
- 7.2 The Supplier must not during the contract term:
- 7.2.1 commit:
 - a) a Prohibited Act; or
 - b) any other criminal offence in the Regulations 57(1) and 57(2) under the Public contracts Regulations 2015 and/or the Public contracts (Scotland) Regulations 2015 (as the context requires) or such Regulations by application of Regulation 80(2) of the Utilities contracts Regulations 2016 and/or the Utilities contracts (Scotland) Regulations 2016 (as the context requires) or it or any connected person any other offence set out in Part 1 of Schedule 6 (Mandatory exclusion grounds) of the Procurement Act 2023 (as applicable); and
 - 7.2.2 do or allow anything which would cause the Buyer, including any of their employees, consultants, contractors, subcontractors or agents to breach any of the Relevant Requirements and/or this Paragraph 7 or incur any liability under them.
- 7.3 The Supplier must during the contract term:
- 7.3.1 create, maintain and enforce adequate policies and procedures in accordance with good industry practice and to ensure it (including its shareholders, members, directors and the Supplier staff) complies with the Relevant Requirements to prevent a Prohibited Act and require its subcontractors to do the same;
 - 7.3.2 keep full records to show it has complied with its obligations under this Paragraph 7 and give copies to the Buyer on request; and
 - 7.3.3 if required by the Buyer, within twenty Working Days of the commencement of the contract, and then annually, certify in writing to the Buyer, that they have complied with this Paragraph 7, including compliance of Supplier staff, and provide reasonable supporting evidence of this on request, including its policies and procedures.
- 7.4 The Supplier must immediately notify the Buyer if it becomes aware of any breach of Paragraph 7.1 or 7.3 or has any reason to think that it, or any of the Supplier staff, have either:
- 7.4.1 been investigated or prosecuted for an alleged Prohibited Act;
 - 7.4.2 been debarred, suspended, proposed for suspension or debarment, or are otherwise ineligible to take part in procurement programmes or contracts because of a Prohibited Act by any government department or agency;
 - 7.4.3 received a request or demand for any undue financial or other advantage of any kind related to the contract; and
 - 7.4.4 suspected that any person or party directly or indirectly related to the contract has committed or attempted to commit a Prohibited Act.
- 7.5 If the Supplier notifies the Buyer as required by Paragraph 7.4, the Supplier must respond promptly to their further enquiries, co-operate with any investigation and allow the audit of any books, records and relevant documentation.
- 7.6 If the Supplier is in default under Paragraphs 7.1, 7.2 or 7.3:
- 7.6.1 the Buyer may require the Supplier to remove any Supplier staff from providing the contract deliverables if their acts or omissions have caused the default;
 - 7.6.2 such default shall be deemed to be a material breach of the contract that is not capable of correction, and the Buyer can immediately terminate the contract.

- 7.7 In any notice the Supplier gives under Paragraph 7.5 it must specify the:
- 7.7.1 Prohibited Act;
 - 7.7.2 identity of the party who it thinks has committed the Prohibited Act; and
 - 7.7.3 action it has decided to take.
- 7.8 For the purpose of this Paragraph 7, the following capitalised terms shall have the meaning given to such term below:
- 7.8.1 "Prohibited Act" shall mean:
 - 7.8.1.1 to directly or indirectly offer, promise or give any person working for or engaged by the Buyer or any other public body a financial or other advantage to:
 - 7.8.1.2 induce that person to perform improperly a relevant function or activity; or
 - 7.8.1.3 reward that person for improper performance of a relevant function or activity;
 - 7.8.1.4 to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with the contract; or
 - 7.8.1.5 committing any offence:
 - 7.8.1.6 under the Bribery Act 2010 (or any legislation repealed or revoked by such Act); or
 - 7.8.1.7 under legislation or common law concerning fraudulent acts; or
 - 7.8.1.8 defrauding, attempting to defraud or conspiring to defraud the Buyer or other public body; or
 - 7.8.1.9 any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct had been carried out in the UK; and
 - 7.8.2 "Relevant Requirements" shall mean all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State pursuant to section 9 of the Bribery Act 2010.

8. Conflict of interest

- 8.1 The Supplier must take action to ensure that neither the Supplier nor the Supplier staff are placed in the position of an actual or potential direct or indirect conflict between the financial, professional or personal interests of the Supplier or the Supplier staff (as applicable) and the duties owed to the Buyer under the contract, in the reasonable opinion of the Buyer ("Conflict of Interest").
- 8.2 The Supplier must promptly notify and provide details to the Buyer if such an actual or potential Conflict of Interest happens or is expected to happen. If such a Conflict of Interest could arise but could be avoided by the Supplier establishing information barriers, the Supplier sets up and maintains information barriers to ensure that there is no such Conflict of Interest. Information barriers may include: arrangements for physical separation of teams between those working on the contract and any tender or competition; measures to identify restricted groups to which the information barriers will apply; measures to prevent sharing of information between restricted groups including location and storage of confidential papers; signing of personal statements by members of restricted groups recognising obligations regarding confidentiality and training of restricted groups; identification of individuals responsible for overseeing information barriers; and measures to protect the confidentiality of electronically held information and emails including password protection. The Supplier provides at any time on request by the Buyer written confirmation and details of any information barriers have been set up and maintained.
- 8.3 Where there is or may be an actual or potential Conflict of Interest (including where the Buyer in its reasonable opinion considers the Supplier's written confirmation and details of information barriers to be unsatisfactory, considers that the information barriers do not prevent a Conflict of Interest arising or suspects non-compliance with the information barriers) it shall be deemed to be a material breach of the contract that is not capable of correction and the Buyer can terminate its contract immediately or take any other steps it thinks are necessary.

SCOPE (Technical Work Scope)

1. Introduction

The East Coast Route is a key economic link between London and Scotland for business and leisure travellers, and is a major freight route for services from the north of England to the East Coast ports of Felixstowe and Harwich. There are a number of bottle necks across the East Coast Route, for example 2-track sections at Welwyn Garden City, between Grantham and Doncaster, and Doncaster and York.

Network Rail need to have contingencies in place to respond, recover and return to normal business-as-usual operation following operational incidents. This service is a key part of those contingency plans, providing network resilience by responding quickly to mitigate delays, and putting passengers first.

2. The Services

- 2.1. This Technical Work Scope details the Client's requirements for the supply and operation of a rescue and incident response service, commonly known as a "Thunderbird", consisting of:
 - 2.1.1. recovering failed/stranded trains; and
 - 2.1.2. services required by the Client in the operation of the Network, including activities which are preparatory or incidental to, or consequential to the operation of the "Network".
 - 2.1.3. "Network" has the definition given to it in the Network Code.
- 2.2. The Services described in 2.1 will consist of both re-active and planned activities.
- 2.3. The Supplier is to provide suitable locomotive and driver resource to operate the service.
- 2.4. Electric Train Heating and the ability to couple in multiple with another locomotive must be provided.
- 2.5. The locomotive resource must have the minimum ability to operate over the East Coast and North East route, in line with the driver's route knowledge.
- 2.6. The locomotive resource must be capable of assisting any train service that may operate on the routes listed in section 3.
- 2.7. Adaptor couples are supplied by the relevant train or freight operating company if required.
- 2.8. An option to have miniature snow ploughs fitted to the locomotive resource must be available for the Client to request when required.
- 2.9. The Supplier is responsible for the operation and maintenance of the locomotive resource.
- 2.10. The Client may provide a Mobile Operations Manager (MOM) to accompany the service, however the operation of the service is not reliant on a MOM being present.
- 2.11. When stabled at Newark Northgate, the Supplier shall deploy the locomotive within 15 minutes of receiving an instruction from the Client.
- 2.12. The Supplier shall provide a roster of drivers, at least one week in advance, to include at least the driver's name and contact telephone number. The roster is to be sent via email to a list of recipients which will be provided during the startup meeting.

3. Route Knowledge

The Supplier's driver resource must have a good level of route knowledge, but as a minimum must include the following:

- 3.1. London King's Cross to Newcastle,
- 3.2. Great Northern & Great Eastern (GNGE) Joint Doncaster to Peterborough (Including Newark to Bootham Jct (NOB1))
- 3.3. Doncaster to Leeds
- 3.4. Leeds to York
- 3.5. Shaftholme Junction to Knottingley
- 3.6. Knottingley to Milford
- 3.7. Milford to Church Fenton
- 3.8. Milford to Temple Hirst via Gascoigne Wood, Hambleton, Selby Canal Junction
- 3.9. Neville Hill Depot
- 3.10. Bounds Green Depot

- 3.11. Heaton Depot
- 3.12. Langley Jcn to Wood Green via Hertford
- 3.13. Hitchin Cambridge Junction to Peterborough via Ely

4. Location

The service, including locomotive and driver resource on shift, is to be based at Newark Northgate Sidings.

5. Times of Operation

The service is required 24 hours a day, 7 days per week, excluding Christmas day and Boxing day.

6. Facilities Provided by the Client

Facilities at Newark Northgate Sidings consist of mess area, toilet, kitchen, rest area, and equipment store.

7. Staff Training and Competence

- 7.1. The Supplier shall provide suitably qualified and competent resource as necessary for them to successfully perform the Services. All personnel shall meet Industry Standards.
- 7.2. The Supplier shall operate an appropriate monitoring, assessment, and development regime to ensure that competence is maintained and remains current.
- 7.3. The cost of all necessary staff training shall be deemed to be included in the Supplier's price.
- 7.4. The Supplier shall maintain dated records of training given, assessments completed, and certificates of competence issued.
- 7.5. The Supplier's driver traction and route knowledge shall be maintained and regularly updated, and as a minimum shall be forwarded to the Client when updates have been made.

8. Resources

- 8.1. The Supplier shall provide sufficient resources to deliver the Service.
- 8.2. The Supplier shall provide any necessary transport and equipment for the Supplier's personnel to carry out their duties.
- 8.3. The Supplier's resource shall comply with all relevant statutory requirements, The Railways and Other Guided Transport Systems (Safety) Regulations (2006) (ROGS), and all relevant Network Rail Group and Client's Company Standards and specifications.
- 8.4. The Supplier is responsible for rostering their personnel and arranging all transportation and accommodation. The Supplier shall provide adequate number of personnel on terms and conditions to deliver the Services without excessive hours being rostered. The Supplier shall comply with all relevant legislation and law and Railway Group Standards with regards working hours only extending in an emergency to enable the return of the railway to safe Operational use in agreement with the Client's Operations Control Facility.
- 8.5. The Supplier shall be responsible for notifying the Client's Representative as soon as it identifies that a resource is unlikely to be available to deliver a Service. The Supplier shall also provide details of the rectification work being undertaken and anticipated timescales for completion. Where possible the Supplier should offer at least one alternative.
- 8.6. The Supplier shall provide details of the rostering arrangements of its personnel to the Network Rail's Representative and update on any development and progress of proposals for their amendment. The Supplier shall not vary the terms and conditions by which the personnel are engaged without first notifying and agreeing with Network Rail's Representative.

9. Safety

- 9.1. The Supplier shall provide a safety report each period, no later than 6pm on the Thursday following the end of the period including but not limited to; Signal Passed at Danger events, Operational safety events during the period, hours worked, exceedances, number of Fatalities, Reporting of Injuries, Diseases and Dangerous Occurrences Regulations (RIDDOR's), Personal accidents, Environmental incidents, and safety critical information (list is not exhaustive).
- 9.2. In the event of a safety or environmental incident the Supplier shall provide, within 48 hours of said incident, a draft outline of the circumstances, possible causes and impact to personnel and/or plant and infrastructure. This draft outline shall be for information only and shall not be considered binding by either party.
- 9.3. In the event of a safety or environmental incident the Supplier shall lead or actively participate in a full investigation as dictated by the requirements of this agreement and relevant legislation and shall make all reports and conclusions available to the Client in a timely manner
- 9.4. The Supplier's personnel operating the service must comply with all personal safety initiatives and procedures as required including wearing Personal Protective Equipment as prescribed by the Client. These requirements shall be compatible with NR/L2/OHS/021. If attending a Client facility, depot, or site, the Supplier shall comply with the relevant PPE requirements as stated in NR/L2/OHS/021
- 9.5. The Supplier shall have a lone working policy that ensures the safety of its work force. The Supplier shall provide an example of this to the Client on request.
- 9.6. The Supplier shall adopt the Client's 10 Life Saving Rules or have an equivalent standard that encourages and supports a safety culture. The Supplier shall provide an example of these to the Client on request.
- 9.7. The Supplier shall have a Fatigue Management system in place.
- 9.8. The Supplier is required to meet applicable Network Rail Standards and their associated modules throughout the duration of the contract, this includes all updates to these standards.

10. Instructing the Service

- 10.1. Reactive services will be instructed by Route Control via telephone to the Network Rail MOM or the Supplier's driver.
- 10.2. Service requirements known in advance will be planned by the Network Rail MOM who will notify the rostered driver, and submit any paperwork required to plan a route.
- 10.3. Ordinarily the re-active service will be activated by the East Coast Route Control Management Team based in York, however other Network Rail Control Rooms may request mobilisation of the service.
- 10.4. The driver will be directed by the Network Rail MOM, if on duty, or as instructed by Route Control.
- 10.5. Planned requirements will be directed by the Network Rail MOM.
- 10.6. Any VSTP (Very Short Term Planning) requirements will be submitted by the Network Rail MOM unless stated otherwise at the time.
- 10.7. In the event of a train recovery, the Supplier's driver will be expected to drive the locomotive to the affected site, provide coupling, and train running advice to the Network Rail MOM, if on duty, or the driver of the failed train as appropriate.
- 10.8. The driver may be required to leave the cab to assist at ground level if circumstances dictate at a particular site.
- 10.9. If the service is providing a planned requirement, it may be required to abandon the requirement to deploy to a priority incident if instructed by Route Control, or the Network Rail MOM.
- 10.10. The Supplier will operate the service under an Unregulated Track Access Agreement. Any use of the locomotive that is not directly providing these services, for example driver route knowledge training or maintenance, is not subject to the use of the Unregulated Track Access Agreement and will be liable to all terms within the Supplier's regulated Track Access Agreement.

11. Social Value

Throughout this requirement, Network Rail is committed to doing business as usual, but even better, so as to add value and not cost.

Network Rail is committed to the facilitation of rail activity so that risk of negative impacts on people are managed or mitigated: unauthorised access to the railway; harm to people on and around the rail network; noise vibration; poor air quality; and disruption resulting from rail activity.

Social value priorities for this requirement include:

Wellbeing

Improving community integration through collaboration in codesign and delivery including:

- a) Understanding local demographics, needs and opportunities
- b) engagement with different parts of the community (including the education system) to inform decisions, strategy and projects to leave a positive legacy for future generations.
- c) involvement of local stakeholders and/or users in design
- d) positive actions with community groups
- e) making facilities available for community groups, education or training
- f) measures to build trust, gain credibility and build relationships to increase community integration, trust and influence
- g) Flexibility in responsiveness and ability to adapt in approach to community engagement and initiatives
- h) Support to community-led initiatives
- i) employee volunteering schemes
- j) support for community rail sector.

Environmental Stewardships

A low emissions railway, including:

- a) net zero carbon emissions by 2050
- b) continual improvements to air quality so that our passengers, neighbours, and employees breathe healthier air.

Social Value Reporting

The Supplier will develop and maintain a plan throughout the life of the Framework detailing how they will contribute to the overall achievement of Network Rail's social value priorities and report progress in doing so.

- a) The social value commitments and targets made at contract award stage will be included here and form part of the KPIs and contractual agreement
- b) The Supplier's implementation plan will be included here detailing how the commitments will be delivered and form part of the contractual agreement
- c) The Supplier will manage, measure and report on the delivery of Social Value throughout the life of this Contract/Framework

CONTRACT REQUIREMENTS: HSEA

Overview

Scope

This document applies to all contracts let by Network Rail that relate to works or include an element of works as part of a service offering. It includes design and construction, build only, installation or removal of any assets and equipment, operational and site investigation activities.

Purpose

Network Rail's core value is the safety and health of its passengers, employees and contractors and the protection of its property and the environment.

Network Rail expects the same dedication to achieving this core value from its Contractors and its sub-contractors. Network Rail requires its contractors to adopt, implement and enforce rules and practices necessary for the safe and environmentally responsible performance of the contract scope. This document sets out the health, safety, environmental and quality assurance (HSEA) requirements that the Contractor complies with.

CONTENTS**General**

- 1 Network Rail Standards
- 2 Definitions
- 3 HSEA Contacts

Section A - Health and Safety

- 1 Legislation and Standards – Generally
- 2 Legislation and Standards applicable when working on Network Rail Managed Infrastructure
- 3 Permissions
- 4 Statutory Notices
- 5 Reporting of Accidents and Incidents
- 6 Network Rail Principal Contractor Licence
- 7 Periodic Safety Reports
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Section B – Quality Assurance

- 1 General
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Section C – Environment and Social Performance

- 1 Legislation and Standards
- 2 Environment and Social Performance Policy
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Appendix A Health & Safety Legislation and Standards – Generally**Appendix B Health & Safety Legislation and Standards applicable when working on Network Rail Managed Infrastructure****Appendix C NOT USED****Appendix D Environment and Social Performance Legislation and Standards****Appendix E HSEA Contact Details****Appendix F Contract Specific Health, Safety and Environmental Reporting Metrics****Appendix G Summary of Lifesaving Rules**

General

1 Network Rail Standards

Network Rail standards are available free of charge on the <https://standardse-networkrail.msaproxy.net/>.

2 Definitions

Agreed Rail Industry Period: Means each or any of the thirteen accounting periods in a Contract Year.

Close Call: Anything that has the potential to cause harm or damage. This includes the potential to: Harm a person including minor injuries and fatalities, Harm the environment and/or protected species, Damage railway infrastructure, plant, vehicles, tools, equipment, systems and information.

Construction Phase Plan: Means the key document that details and health, safety and environmental risks associated with the construction phase of the works and the control measures that will be implemented to minimise risks, or where possible, eliminate them.

Contractor: Reference to “Contractor” is deemed to mean “Supplier” or “Consultant” as relevant to the contract of which this schedule forms a part and includes its sub-contractors.

Designs: Means the process of creating a solution to the project brief with instructions for the construction.

High Street Environment: An environment that exists, or can be created, where construction work, structures design, mineral exploration and extraction (or work preparatory to mineral exploration and extraction) can be undertaken by or on behalf of Network Rail Infrastructure Limited (NRIL) without creating or transferring safety risk to or from Network Rail Managed Infrastructure (NRMI) and adversely affecting its safe operation. The requirements for high street working are set out in NR/OHS/L3/005.

Integrated Control Centre: Means the designated control centre that controls the day-to-day running of the railway.

Level 1, 2 or 3 Investigations:

Level 1 – A preliminary investigation to establish the facts and preliminary causes of an accident or incident, and whether there is a need for further investigation. Also known as a preliminary investigation. Note: Level 1 (preliminary) investigations must be completed on the approved Level 1 form or on an approved system such as IRIS.

Level 2 – An investigation led by Network Rail or a railway undertaking of an accident or incident for which a Level 3 (formal) investigation is not required. Also known as a local investigation.

Level 3 – A formally structured investigation of an accident or incident led by Network Rail or a railway undertaking. Also known as a formal investigation.

Network Rail’s Representative: Reference to “Network Rail’s Representative” is deemed to mean “Employer’s Representative”, “Project Manager”, “Service Manager”, “Buyer’s Representative” or “Hirer’s Representative” as relevant to the contract of which this schedule forms a part.

Network Rail Managed Infrastructure (NRMI): Infrastructure that falls within the geographic boundaries of Network Rail Infrastructure Limited railway, including the permanent way and land within the lineside fence, and plant used for signalling or exclusively for supplying electricity for traction purposes to NRIL’s operational railway. It includes permanent way at stations and plant within these locations used for signalling NRIL’s operational railway, or exclusively for supplying electricity for operational purposes to the operational railway. At stations managed by NRIL it also includes the means of access for passengers between the platforms and the exterior of the station premises. NRMI does not include the following: depots, yards or sidings owned by, or leased to, other parties; infrastructure managed by Network Rail High Speed Ltd; and infrastructure determined by the safety regulator (Office of Rail Regulation) to be excluded from the mainline railway. Structures such as tunnels, bridges, culverts, viaducts, covered cuttings, retaining walls, underpasses, etc., are deemed to form part of NRMI only in relation to their potential to transfer risk onto, or from, the operational railway.

Permit to Work: Means a procedure that authorises contractors to carry out specific elements of work at a designated site within a specified time frame.

Pre-construction Information: Means the detailed information provided by Network Rail to the Contractor for the Contractor to take into account when developing its construction phase plan.

Principal Contractor: Is a Contractor appointed by Network Rail to co-ordinate the construction phase of a project in compliance with CMD Regulations 2015.

Product Acceptance Certificates: Means a certificate that demonstrates assurance that the products are accepted for use on or about our infrastructure.

Rule Book: Means a series of documents that contain direct instructions and guidelines for everyone working in the railway industry to follow to make sure everyone works safely.

Site Rules: Means rules identified and adhered to during a period of Works.

Specification: Means the statement of needs or requirements as detailed in the Contract.

Task Briefing Sheets: Means a document that sets out details of the work to be undertaken, resources required to undertake the work and the site specific arrangements for managing health and safety risks.

Work Package Plan: A document that details: the methodology of how the work will be undertaken, arrangements for managing health and safety risks and emergency arrangements.

3 HSEA Contact Details

Where appropriate insert details of both parties HSEA contacts in Appendix E. Include HSEA leadership, any day-to-day management roles and on-call / out-of-hours arrangements.

Section A - Health and Safety

1 Legislation and Standards – Generally

The Contractor complies with all applicable health and safety:

- Legislation;
- Railway Group Standards;
- Railway Safety and Standards Board (RSSB) Guidance Notes; and
- Network Rail Standards as listed in the Appendices.

Under Principal Contractor Licensing conditions, the Contractor is required to have processes in place to identify new and revised Legislation, Group and Network Rail Standards. The Contractor is responsible for arranging and undertaking the required level of briefing (i.e. technical and awareness) to all relevant affected parties. Arrangements for such briefings shall be in accordance with the Contractor's own processes and procedures.

Items marked ^{Note 1} in Appendix B denote documentation that has been written to provide guidance. Compliance with such documentation cannot be enforced, however the Contractor uses reasonable endeavours to comply with the information contained in such guidance.

The Contractor labels products to enable Network Rail to meet its legal requirements under the Manual Handling Operations Regulations 1992. As such, Network Rail requires that the product labels for products weighing 20kg or more are clearly labelled:

- (a) with the weight of each load, and
- (b) on the heaviest side of any load whose centre of gravity is not positioned centrally.

The Contractor designs and sources products which comply with the Health and Safety At Work etc. Act 1974, section 6.

2 Legislation and Standards applicable when working on Network Rail Managed Infrastructure

The Contractor shall comply with the legislation and standards listed in Appendix B NRMI.

3 Permissions

The Contractor seeks permission, in writing, from Network Rail's Representative prior to undertaking the following:

- ***Access to sub-stations, electrical switchrooms, telecom or signal equipment rooms, and areas with gas fire protection systems or any other high hazard locations specified in advance by Network Rail's Representative for the project.***

The Contractor does not work in such rooms without written authority from Network Rail's Representative. The Contractor gives Network Rail's Representative not less than 28 days written notice, separately for each site, of its intended presence on the sites. It provides details of the nature and duration of the work, methods of isolation (where required) and the number and location of its staff scheduled to be on the sites. The Contractor operates a Permit to Work system for the sites.

- ***Prohibition on the use of explosives***

The Contractor does not use explosive and explosive devices, including track detonators (railway fog signals) and bolt guns, except as may be specifically permitted in the Contract or as approved by Network Rail's Representative and then only with the appropriate control and accounting mechanisms in place. Where use has been permitted the Contractor provides suitable arrangements for the issue, transportations, storage and decommission and disposal of devices.

- ***Use of radios, electrical equipment and mobile telephones***

Radio transceivers, mobile phones and data transmission devices which can cause distraction or interference with safety critical railway systems are not be used on or adjacent to the line or near open signalling equipment cabinets, without the written approval of Network Rail's Representative . The Contractor submits a written request at least 14 days before the proposed use of such radio equipment and includes the following information:

- output power;
- licence number; and
- allocated frequency.

The Contractor complies with the relevant Network Rail standards for safety critical communications protocols and the recording of them.

- ***Movement and storage of materials, plant and equipment***

1. Due to structural limitations or surface finishes, movement and storage of materials may be restricted. In carrying out route surveys and agreeing installation methods, the Contractor ascertains any such limitations. The Contractor does not undertake any lifting, transportation or storage of heavy items through Network Rail's railway, any station or public areas or use any existing structural member as a lifting or tie-back point without the prior written approval of the proposed method of working by Network Rail's Representative. The Contractor gives Network Rail's Representative the floor loadings to be imposed when moving or storing heavy plant or materials. The Contractor gives at least 14 days notice in writing of any such work described above. The Contractor provides suitable arrangements for delivery point management.
2. The Contractor does not surcharge existing retaining walls. All vehicles, plant and materials are positioned at least 3 metres away from the back faces of such walls, unless specifically allowed by Network Rail's Representative.
3. The Contractor only conveys loads (other than hand-held loads) on escalators and in lifts when not in use by the public and after prior written authority from Network Rail's Representative has been obtained for their movement.

The above does not constitute a comprehensive listing of all instances where the Contractor is required to seek permission from Network Rail's Representative. Further requirements are to be found in the Network Rail Standards and other Contract documents.

4 Statutory Notices

The Contractor notifies Network Rail's Representative immediately that any enforcement intervention occurs and provides copies of any statutory notices received by the Contractor in relation to the works within one working day of receipt of such notice, including, without limitation, notices from the Health and Safety Executive, the Office of Rail Regulation, local authorities, environmental agencies, utility companies, or any other government agency, and particularly any improvement or prohibition notices. The Contractor keeps Network Rail's Representative fully informed regarding any actions proposed by the Contractor to address the notices.

5 Reporting of Accidents or Incidents

- 5.1 The Contractor reports accidents and incidents that are a danger to trains to the appropriate signaller in accordance with the requirements of the Rule Book (GE/RT8000).
- 5.2 Accidents and incidents are reported;
- For all other contracts in accordance with Network Rail Standard NR/L3/INV/3001 and to the relevant Integrated Control Centre:

Network Rail London North Eastern - 01904 718028
- 5.3 The Contractor contributes, cooperates and participates in all Level 1, Level 2 and Level 3 accident and incident investigations.
- 5.4 Close Calls – The Contractor participates in a close call scheme. This involves engaging teams to identify physical hazards, risks and unsafe behaviours, investigating and addressing them where possible, and if not escalating them to Network Rail to address.
- Reporting Close Calls:
- (a) The Contractor makes suitable arrangements for collecting and responding to close calls that occur in areas / activities under its control and notifies Network Rail as specified in Clause 5.2 above depending on project type.
 - (b) Close calls related to the safety and/or security of the operational railway or those that occur in premises or activities not under the control of the Contractor are reported as per Clause 5.2 above at the earliest opportunity.

6 Network Rail Principal Contractor Licence

Where the Contractor holds a Principal Contractor Licence awarded by Network Rail, the Contractor maintains such licence for the duration of the Contract. Any failure to maintain such licence may result in the Contractor being charged for additional safety supervision by Network Rail.

7 Periodic Safety Reports

- 7.1 The Contractor submits Safety, Health and Environment performance data via the [HSE Reporting System](#) (login provided by Network Rail) when working on Network Rail property or infrastructure. The HSE Reporting System is open for Contractor submissions from Wednesday of week 4 (of a 4 week period) to Monday of week 1 (midnight) of each Agreed Rail Industry Period ([HSE Reporting System Period Calendar](#))
- 7.2 Network Rail collates Safety, Health and Environmental performance data from Contractors to generate key performance indicators (KPIs). Data collected may differ depending on the nature of the contract / service / product, but may typically include:
- (a) Lag metrics (mandatory for ALL contracts)**
 - i. Hours worked on the contract (by project where relevant) per period;
 - ii. HSE events that did not result in injury;
 - iii. Injuries that did not result in lost time;
 - iv. Injuries that resulted in lost time (The current injury categories and weightings are provided on The Rail Safety and Standards Board (RSSB) website;
 - v. The duration of lost time per lost time injury;
 - vi. Reporting of Injuries, Diseases and Dangerous Occurrences Regulations (RIDDOR) reportable events; and
 - vii. Notices of Intended Prosecutions (NIPS).

The following are excluded from the above reporting requirements (points i to vii above):

- Injuries sustained whilst commuting (journeys between home and normal place of work. Normal place of work is defined as the persons 'home station' or 'home location' stated in their contract).
- When signs or symptoms of illness or pain surface at work but result solely from a non-work-related event or exposure.

- Injuries to the supply chain personnel sustained on their own work premises, not Network Rail premises, and not directly linked to the operation of the railway.

(b) Lead metric

- vii. Planned safety activities e.g. inspections, risk reviews, training;
- viii. Ad hoc safety interventions e.g. inspections, safety conversations; and
- ix. Project specific safety performance commitments.

Any additional metrics required to be collated by the Contractor, specific to the contract, are listed in Appendix F.

Note:

The data is used to monitor and manage key performance indicators that are reviewed at project and business level performance reviews including for example:

1. FWI (Fatality Weighted Index); and
2. LTIFR (Lost Time Injury Frequency Rate).

The calculations are provided below:

1. FWI calculation: $\text{Injury categories and weightings (value per category) / hours worked} \times 1,000,000$ (The current injury categories and weightings are provided on the RSSB website)
2. LTIFR calculation: $\text{Number of lost time injuries in the reporting period} \times 1,000,000 / \text{Total hours worked in the reporting period}$.

8 Behavioural Safety

- 8.1 The Contractor has a behavioural safety programme, which is implemented across the business.
- 8.2 The Contractor demonstrates senior management commitment to behavioural based safety by conducting regular site safety visits, providing feedback and improvement objectives and by providing regular behavioural based training for all employees.
- 8.3 The Contractor actively supports and encourages its staff to intervene and report if they witness unsafe behaviours, both internally within the Contractor's organisation and to Network Rail through the Close Call reporting process. All reported incidents include any deviation from procedures and plans. The Contractor make sures that its staff and any sub-contractors it employs know that they have the right to stop work when they consider it unsafe to continue.

9 Contract Specific Requirements

None.

Section B – Quality Assurance**1 General**

- 1.1 Unless otherwise agreed in writing by Network Rail's Representative, the Contractor maintains an auditable documented Quality Management System (QMS) either certified to BS EN ISO 9001:2015 or sufficient to meet the requirements of this standard to the satisfaction of Network Rail's Representative, and a Quality Plan (QP) for this Contract aligned to the guidelines set out in BS ISO 10005:2018. The Contractor notifies Network Rail's Representative of any material changes to its QMS.
- 1.2 The Contractor provides Network Rail's Representative with details of any significant failures revealed at either internal or third party audit of the Contractor's QMS or QP for this Contract and allows Network Rail's Representative to carry out similar audits if it so requires. The Contractor provides access to all staff, premises and records as reasonably necessary to assist Network Rail's Representative in such audits.

2 QA Classification of Products

Where the Specification and/or Product Acceptance Certificates specify quality assurance classifications (as per NR/L2/RSE/100/05) for certain products to be used in the Works, if the Contractor is the manufacturer of such products it shall comply with the specified level of quality assurance required for each product and allow Network Rail access to carry out its quality assurance checks. Where such products are being supplied to the Contractor by others, the Contractor shall be aware of the foregoing requirements and through its contract for such supply help facilitate Network Rail's quality assurance checks as necessary.

Section C – Environment and Social Performance

1 Legislation and Standards

The Contractor complies with all applicable environmental and social:

- Legislation;
- Railway Group Standards;
- Railway Safety and Standards Board (RSSB) Guidance Notes; and
- Network Rail Standards as listed in Appendix D.

2 Environment and Social Performance Policy

The Contractor complies with:

- Network Rail's Environment and [Sustainable Development Strategy](#)
- Network Rail's Level 1 Environment and Social Performance Policy that includes the following four appendices;

[Environmental Policy – Page 12](#)

[Social Performance Policy – Page 18](#)

[Weather Resilience and Climate Change Adaptation Policy – Page 16](#)

[Energy and Carbon Policy – Page 14;](#)

- Network Rail Standard NR/L2/ENV/015 Environment and Social Minimum Requirements for Projects.

3 Environment and Social Management Plan (ESMP)

3.1 The Contractor complies with Network Rail Standard NR/L2/ENV/015 and the need to produce an Environment and Social Management Plan (ESMP) and incorporated Environment and Social Appraisal (ESA) and Incident Response Plan (IRP) as appropriate for the works and is applied as required by this Standard. The ESMP is required per work bank or project, and this will be confirmed by Network Rail's Representative. The ESMP is completed by the Contractor and accepted by Network Rail's Representative within 28 days of contract award and prior to the start of the works. The ESMP is accepted only through completion of the EN3 Review and Acceptance form, as completed by Network Rail's Representative. Where the contract mobilisation period is less than 28 days, the Contractor submits the ESMP documentation to Network Rail's Representative at least 14 days before commencement of the works. Site surveys may be required as part of the ESMP e.g. ecological or protected species surveys, to satisfy Network Rail of identification of potential environment and social impacts.

3.2 The Contractor complies with Section 5.2 of the Network Rail Standard NR/L2/ENV/015 and establishes and/or maintains and complies with a Permits, Licences and Consents register.

3.3 The Contractor, where the Contractor is a Principal Contractor (PC), obtains all environmental permits, licences, and consents (PLCs) related to the stage of work for which it has been contracted. The PLCs shall be in the name of the Contractor, not Network Rail, where the Contractor is a PC. Where the Contractor is not a PC, arrangements for environmental PLCs shall align with Network Rail's Delegation of Authority Policy.

The Contractor confirms compliance with, at a time determined and communicated by Network Rail upon contract award, or by request, any active environmental PLCs related to the works.

Evidence of compliance with environmental PLCs may include but is not limited to: licences return, surveys, sampling, modelling, on-site assurance, competency records and/or communications with environmental regulators.

Network Rail retains the right to determine how this data is collected from the Contractor. All data and documentation related to environmental PLCs is returned to Network Rail at project close out following the AMP process.

The Contractor is accountable for compliance with any PLCs as per the Principal Contractors Licencing Assurance requirements (NR/L2/OHS/CP0070). Failure to obtain and abide by the conditions of environmental PLCs related to the works for which a PC has been contracted remains the liability of the PC.

If instructed by the Network Rail's Representative, the Contractor transfers any licences to Network Rail, or any agreed nominated person(s).

- 3.4 The Contractor liaises at the start of the work package or project with Network Rail's Representative and/or Environmental Specialist/Environment Manager and/or Community Relations Manager to agree appropriate communication pathways. Environment and social Inspections and audits are undertaken as necessary by Network Rail during the works and the Contractor can view results of the audits.

4 Reporting of Environmental Incidents

The Contractor reports all environmental incidents that occur to the relevant control centre detailed above under the general health and safety paragraph Clause 5, headed "Reporting of accidents and incidents".

5 Periodic Environmental Performance Reports

- 5.1 The Contractor submits Environment performance data via the [HSE Reporting System](#) (login provided by Network Rail). The HSE Reporting System is open for Contractor submissions from Wednesday of week 4 (of a 4 week period) to Monday of week 1 (midnight) of each Agreed Rail Industry Period ([HSE Reporting System Period Calendar](#)).
- 5.2 The Contractor supplies the performance indicators agreed with Network Rail's Representative. Any additional metrics required to be collated by the Contractor, specific to the Contract are listed in Appendix F.

6 Contract Specific Requirements

None.

APPENDIX A Health & Safety Legislation and Standards – Generally

Confined Spaces Regulations;
Construction (Design and Management) Regulations;
Control of Substances Hazardous to Health Regulations;
Control of Asbestos Regulations;
Control of Vibration at Work 2005;
Dangerous Substances and Explosive Atmospheres Regulations;
Developing and maintaining staff competence Railway Safety Principles and Fire Precautions (Factories, Offices, Shops and Railway Premises) Order;
Electricity at Work Regulations - Guidance, Part 3, Section A Note 1;
Display Screen Equipment Regulations;
Health and Safety at Work, etc. Act;
Health and Safety (Consultation with Employees) Regulations;
Health and Safety (First-Aid) Regulations;
Health and Safety Information for Employees Regulations;
Lifting Operations and Lifting Equipment Regulations;
Management of Health and Safety in Construction;
Management of Health and Safety at Work Regulations;
Management of Health and Safety at Work and Fire Precautions (Workplace) Regulations;
Managing health and safety in construction (Construction (Design and Management);Regulations) Guidance on Regulations – L153;
Manual Handling Operations Regulations;
Noise at Work Regulations;
Personal Protective Equipment at Work;
Pregnant and Young Workers Directive;
Provision and Use of Work Equipment Regulations;
Railway and Other Guided Transport Systems (Safety) Regulations;
Reporting of Injuries, Diseases and Dangerous Occurrences Regulations;
Regulatory Reform Order (Fire Safety);
Transportation of Dangerous Goods;
Temporary Workers Directive;
Work at Height Regulation;
Workplace (Health, Safety and Welfare) Regulations.

APPENDIX B Health & Safety Legislation and Standards applicable when working on Network Rail Managed Infrastructure

1. Network Rail Standards applicable in all cases when working on NRMI

NR/L1/FIR/100	Company Fire Safety Handbook (formerly NR/CS/FIR/100)	<p>Network Rail's Fire Safety Policy mandates requirements applicable to the control of risks arising from fire to the safety of Network Rail workforce, contractors, customers, assets and business activity.</p> <p>The Company Fire Safety Policy defines the policy and procedures for the delivery of effective fire safety management in accordance the Network Rail Health Safety Management System.</p> <p>This policy is supported by a suite of Level 3 standards for use by the Local Manager nominated as the Person Responsible for Fire Safety (PRFS) within all staffed and un-staffed premises and for those managers responsible for sections of Network Rail Controlled Infrastructure.</p>
NR/L2/OHS/00120	Drugs, alcohol and substance misuse in the workplace (formerly NR/CS/OHS/051)	<p>This business process controls the risk of Network Rail employees, contractors, supply chain and anyone who works for or on behalf of Network Rail, working while under the influence of drugs and/or alcohol.</p> <p>The implementation of controls under this business process is the means by which Network Rail and its contractors meet the legal requirements specified in Transport and Works Act 1992 to prevent the commission of offences involving drink or drugs on Network Rail managed infrastructure. It prevents the recruitment of individuals who misuse drugs and alcohol and allows all testing for drugs and alcohol to be fairly managed. Other than where alternatives are specifically noted, contractors should have arrangements in place to comply with this standard which are equivalent to those specified within this document.</p> <p>NOTE: Terms and definitions are in clause 21.</p>
NR/L1/INI/CP1010	Policy on Working Safely in the vicinity of Buried Services	To set out Network Rail's policy and related implementation arrangements for employees and contractors to be able to work safely in the vicinity of buried services. The objective is to reduce the risk of a buried services strike or near miss incident.
NR/L3/INV/3001	Reporting and Investigation Manual	<p>The purpose of this Network Rail standard is to mandate the use of the Reporting and Investigation Manual in order to provide a consistent, comprehensive and structured process:</p> <ul style="list-style-type: none"> • for the reporting of accidents and incidents; • for the investigation of accidents and incidents in order to prevent, or reduce the risk of, their recurrence, without apportioning blame or liability; • that enables information obtained from investigations to be shared with, and used by, organisations with a direct responsibility for maintaining, or improving railway safety. <p>This standard and the Level 3 standards forming the Reporting and Investigation Manual apply to:</p> <ol style="list-style-type: none"> a) Events occurring on Network Rail Managed Infrastructure (NRMI); b) Events that do not occur on NRMI but which cause, or have the potential to cause, an increase in risk on NRMI; c) Events occurring on Network Rail managed stations; d) Events involving rail vehicles operated by Network Rail;

		<ul style="list-style-type: none"> e) Accidents involving Network Rail employees whilst on duty, including whilst travelling in road vehicles (whether owned, hired or leased by Network Rail); f) Occupational ill health affecting Network Rail employees; g) Accidents and assaults involving employees of contractors whilst undertaking work for Network Rail; h) Accidents to members of the public occurring on NRMI or Network Rail managed stations including cases of suicide, suspected suicide and attempted suicide; i) Enforcement action taken by the Office of Rail Regulation or other enforcing authority concerning issues relating to operations or activities on or affecting NRMI and Network Rail managed stations; j) Judicial Inquiries, RAIB Investigations, Network Rail led Formal and Local Investigations, and investigations led by other Railway Group members.
NR/L2/AIF/1020	Buried Services Data Provision (formerly NR/L2/AMG/1020)	Standard that defines a consistent method for obtaining buried services search information before work commences on site.
NR/L2/INI/CP1030	Working Safely in the Vicinity of Buried Services	Standard that identifies the process for a consistent method of planning a safe system of work and how to work safely with these assets when on site.
NR/L2/AIF/1040	Buried Services Data Feedback (formerly NR/L2/AMG/1040)	To identify the process for the supply of as-built buried services drawings/plans following completion of ground disturbance work on Network Rail infrastructure. The feedback of buried services drawings/plans is a safety essential requirement to be able to advise workers who may undertake further ground disturbance work at the same location and to protect the assets for the future.
NR/L2/OHS/00124	Competence Specific Medical Fitness Requirements	The document defines the competence specific medical fitness requirements for employees and contractors working on Network Rail managed infrastructure.
NR/L2/OHS/021	Personal Protective Equipment and Work Wear (PPE) (formerly NR/SP/OHS/021)	Standard which specifies the minimum standards and requirements for Personal Protective Equipment (PPE) and Work Wear to be worn when working on Network Rail infrastructure.
NR/L2/OHS/00113	Health Screening and Surveillance for Hand Arm	The purpose of this document is to describe the system of health screening and health surveillance for employees and prospective employees of Network Rail whose health may be at risk due to exposure to hand arm vibration (HAV). The system of health surveillance is in response to the requirements of the Control of Vibration at Work Regulations 2005. Implementation of the standard will enable Network Rail to comply with its legal obligations under the regulations and meet its duty of care to those with an existing condition or likely to acquire such a condition if no action is taken
NR/L2/OCS/021	Weather - Managing the Operational Risks	To mandate how Network Rail will manage the operational risks arising from adverse and extreme weather, including the use of weather forecast information, to give adequate preparation for such events.
NR/L2/MTC/006	Maintenance and Contents of	This specification relates to hazards on Network Rail's controlled infrastructure, access points and other locations (e.g. stations and sidings) on the rail infrastructure. Hazards

	the National Hazard Directory	listed in the directory shall be of a permanent or semi-permanent nature, not of a temporary nature e.g. missing drain cover. Such temporary hazards should be notified to Network Rail staff and contractors responsible for their repair.
NR/L2/CIV/095	Asset Protection and Optimisation Management of Third Party Works on Network Rail Infrastructure	<p>The purpose of this business process is to support in the mitigation of potential risks imported to the Network Rail infrastructure by Third Party organisations when working on, near, over or under the infrastructure through the application of Asset Protection and Optimisation (ASPRO) controls.</p> <p>Potential risks can be imported to the railway infrastructure from a multitude of Third Party works including:</p> <ul style="list-style-type: none"> •building a new station; •building new bridges; •works within the designated precautionary area of level crossings. <p>It applies to Third Party works being undertaken where Network Rail is not the sole client, including the Asset Protection assurance of works being undertaken by a Third Party, to assets that will be taken over by Network Rail for operation and/or maintenance.</p> <p>This business process supports NR/L1/CIV/094; National Asset Protection and Optimisation (ASPRO) Delivery Framework.</p> <p>This business process is to be read in conjunction with NR/L2/OHS/0047; Application of the Construction (Design and Management) Regulations to Network Rail Construction Projects.</p>
NR/L3/MTC/SE0115	Confined Spaces Working and Entry Procedure (NR/PRC/MTC/SE0115)	This procedure defines the actions and controls to be applied before entering any Confined Space, to ensure the work can be carried out safely and without risk of injury or death.
NR/L3/INI/CP0036	The Provision of Welfare Facilities	The purpose of this standard is to specify the process required whereby all personnel working on Network Rail Managed Infrastructure are provided with welfare facilities that are clean, properly maintained and fit for purpose. This standard interprets the Construction (Design and Management) Regulations 2015 and other applicable Health and Safety legislation.
NR/L3/OHS/0046	The Reporting, Investigation and Recording of Safety and Sustainable Development Events and Close Calls within Infrastructure Projects	<p>This work instruction outlines the process to be followed to achieve compliance with NR/L2/INV/002, the reporting and investigation manual and associated modules by Contractors delivering projects on behalf of Network Rail Infrastructure Projects. This work instruction further explains the place of Life Savings Rules (see Appendix G of this template for a summary) and Fair Culture investigation within the overarching process and clarifies the expectations Network Rail has of its Contractors in their management and close out of Close Calls.</p> <p>This work instruction provides a framework for all Contractor organisations to follow; the way individual organisations' approach the requirements will depend in some degree on their size and resources. By providing this framework there should be a greater and more consistent understanding of the requirements, which can only improve relationships.</p> <p>This work instruction applies to all Safety and Sustainable Development Events and Close Calls resulting from work managed by Contractor Organisations working on behalf of Infrastructure Projects. It applies whether or not the project is on Network Rail Managed Infrastructure.</p>

NR/L2/INI/CP0070	Principal Contractor Licensing Scheme	This standard sets out the management system requirements for suppliers prioritised by Network Rail for either a Principal Contractor Licence (PCL) or a Rail Plant Operating Company in Possessions Licence (POL). This standard has been developed to bring together the requirements for suppliers engaged in contracts directly with Network Rail, either as a Principal Contractor or as a Rail Plant Operating Company in Possessions Licence holder.
NR/L2/OHS/0044	Planning and managing construction work	The implementation of this standard: a) allows for the right information to reach the right people at the right time for them to do their job safely; b) contributes to the safe management and control of work and tasks at a site of work; c) provides a consistent layout, content and information headings for Construction Phase Plans, Work Package Plans and Task Briefing Sheets. This standard applies to all construction work undertaken by or on behalf of Network Rail and covers any asset owned, managed, or occupied by Network Rail. This standard does not apply to the planning and management of works that are not defined as construction work (non-construction work) under the Construction (Design and Management) Regulations 2015. This standard provides a framework for recording arrangements made during the planning and management of construction work and specifies the content, order and minimum information headings for: a) Construction Phase Plans (CPP); b) Work Package Plans (WPP); and c) Task Briefing Sheets (TBS).
NR/L2/INF/02202	Records Management of Health and Safety Files	This standard specifies the records management requirements for the management of health and safety (H&S) files. This standard is compliant with the Construction (Design and Management) Regulations 2015 (CDM Regulations). This Network Rail standard specifies the records management processes for: a) agreeing the content of the H&S file. This is determined during the pre-construction phase and detailed in the Construction Phase Plan; b) the delivery and acceptance of H&S files; c) the onwards management and update of H&S files. This standard applies to Network Rail staff and Network Rail contractors who carry out work where Network Rail is the Client as detailed in CDM Regulations.
NR/SP/OHS/050	Sentinel Scheme Rules	The purpose of this document is to define the procedure and the mandatory requirements associated with NCCA and the Sentinel Scheme Rules. Sentinel scheme rules apply to all competencies covered by the scheme and all individuals who hold associated competencies.
NR/L2/OHS/019	Safety of People Working On or Near the Line (NR/SP/OHS/019)	The purpose of the standard is to control the risks to personnel from site risks, activity risks and train movements by requiring effective planning of work activities “on or near the line”, or which could affect the area termed “on or near the line”. This standard sets out the process to manage the planning and delivery of work that: a) enables local planning – those who do the work are involved in planning the work; b) establishes the person in charge of delivering work on site; c) embeds independent verification and authorisation of the planned work and controls and manages interactions between sites of work; d) requires adequate risk assessment is carried out; e) requires a check of risks and controls at the point of work; f) identifies safety responsibilities and accountabilities; and g) is consistent with the Rule Book GE/RT8000. The standard requires a focus on the management of the significant risks and improving the quality of the safe work packs (SWP) by providing clear, concise, relevant information to the people who need it in order to maintain safety whilst working. This standard

		applies to all persons involved in the planning and delivery of work on or near the line or which could affect the area termed “on or near the line”, carried out by or on behalf of Network Rail, outside parties, third parties, their contractors and sub-contractors. This standard defines the process to keep people safe for work activities on or near the line and the development of a safe system of work through the production and issuing of a SWP. This document is complementary to, and is to be used in conjunction with existing rule books, regulations, legislation, standards, processes and procedures. This standard does not specifically cover the electrical risks associated with working on or near electrified lines. A safe system of work can include the use of more than 1 module of this standard.
NR/L2/OHS/020	Track Visitor Permits (formerly RT/LS/S/020)	Details arrangements for the issue and control of Track Visitor Permits (TVPs) issued in accordance with Network Rail Company Specification NR/SP/CTM/021 for people without Personal Track Safety (PTS) certification.
NR/L2/ERG/003	Management of fatigue: Control of Working Hours for Staff undertaking Safety Critical Work	This standard outlines the requirements for managing fatigue and working hours. It applies to all Network Rail employees who undertake safety critical work, and to those suppliers whose employees undertake safety critical work on Network Rail controlled infrastructure. This standard will be withdrawn on 29 October 2022, but contractors are encouraged to achieve compliance with the replacement standard NR/L2/OHS/003 prior to this date.
NR/L2/OHS/003	Fatigue Risk Management	This standard specifies the principles for managing fatigue and working hours. It applies to ALL Network Rail employees regardless of their role and ALL contractors whose employees work on Network Rail managed infrastructure, assets and systems. This standard is mandatory and shall be complied with by Network Rail and its contractors from 29 October 2022. Contractors are encouraged to achieve compliance prior to the due date. This standard shall replace NR/L2/ERG/003 from the 29 October 2022.
NR/L3/MTC/EP0152	Working on or adjacent to conductor rail	This standard identifies a process, to be followed by Network Rail and its contractors, when planning and undertaking work on or adjacent to conductor rail(s) within Investment Projects and the project delivery arm of Asset Management. This standard is applicable to both third / fourth rail systems and applies to Investment Project and Asset Management staff, managers and contractors who are planning / preparing to perform, or are currently working on or adjacent to, a live conductor rail.
NR/SP/ELP/29987	Working on or about 25 kV A.C. Electrified Lines (RT/E/S/29987)	NR/SP/ELP/29987 comprises a suite of thirteen modules. The specification includes the responsibilities of persons required to work on, or so near to, electrified lines that danger may arise. Further requirements are contained in Rule Book GE/RT8000, (Modules AC1, AC2 and AC3).
NR/L2/RMVP/0200	Infrastructure Plant Manual	This manual details requirements and guidance when using plant for the installation, renewal and maintenance of Network Rail’s managed infrastructure. Application of this manual will support a safe working environment, compliance with statutory legislation and Network Rail’s Health and Safety Management System. This manual applies to all Network Rail functions and its contractors when using plant described as; a) on-track machines; b) on-track plant; c) portable and transportable plant; d) mobile plant and road vehicles. For infrastructure related activities, including but not limited to the installation, renewal, maintenance, inspection and measurement of the infrastructure and its components.

NR/L2/OHS/00112	Worksafe Procedure	<p>This business process:</p> <ol style="list-style-type: none"> 1. enables work groups / employees to feel confident that if they have genuine concerns about the safety of a task or a system of work, their concerns will be given serious consideration and they will not face recriminations. 2. allows for work to stop if there is a potential or imminent risk of an accident or incident arising; 3. can be applied for example, by a work group / employee if they are asked to undertake a task without the required training, equipment or personal protective equipment, or if there are no adequate risk controls in the task briefing or safe system of work in place.
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2. Group Standards applicable on the NRMI

GERT8000	Rule Book & Associated Handbooks	This module will contain those amendments previously published in the Periodical Operating Notice. It will also contain amendments published for the first time and amendments that do not justify reissue for the module concerned.
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Note : Current Group Standards can be viewed and downloaded at:
www.rgsonline.co.uk.

3. Railway Safety and Standards Board Guidance Notes applicable on the Operational Railway

GEGN8532 ^{Note 1}	Guidance Note: Railway Fog Signals	Document provides guidance on the supply, control and disposal of railway fog signals.
GOGN3518 ^{Note 1}	Guidance Note: Incident Response Planning and Management	Document gives guidance on interpreting the requirements of RGS GORT3118.
GORT3215	Requirements for WON, PON and Sectional Appendix	Document mandates requirements for the production of information related to engineering work, alterations to track and signalling arrangements, local operating instructions and localised amendments to National Operations Publications.

Note: Current Railway Safety and Standards Board Guidance Notes can be viewed and downloaded at: www.rgsonline.co.uk.

APPENDIX C Health & Safety Network Rail Standards applicable when working in a High St Environment

NOT USED

APPENDIX D Environment and Social Performance Legislation and Standards**Legislation, Approved Codes of Practice and Guidance Notes**

The Air Quality Regulations
Ancient Monuments and Archaeological Areas Act
Clean Air Act
Clean Neighbourhoods and Environment Act
Climate Change Act
Conservation of Habitats and Species Regulations
Contaminated Land Regulations
Control of Pollution Act
Control of Pesticides Regulations
Control of Substances Hazardous to Health
Environment Act
The Environmental Damage Regulations
The Environmental Noise Regulations
Environmental Protection Act
Environmental Permitting (England and Wales) Regulations
Environment (Wales) Act
The Fluorinated Greenhouse Gases Regulations
Ground Water Regulations
Hazardous Waste Regulations
Landfill Regulations
Modern Slavery Act
National Heritage Act
Natural Environment & Rural Communities Act
The Ozone-Depleting Substances Regulations
Packaging Waste Regulations
Protection of Badgers Act
Pollution, Prevention and Control Regulations
Registration, Evaluation, Authorisation and Restriction of Chemicals Regulations (REACH)
Road Traffic Act
Town and Country Planning Act
Waste Electrical and Electronic Equipment Regulations
Waste (England and Wales) Regulations
Waste (Scotland) Regulations
Water Resources Act
Water Industry Act
The Water Environment and Water Services (Scotland) Act
Waste Electrical and Electronic Equipment Regulations (WEEE)
Wildlife and Countryside Act
Mandatory requirements of the relevant local planning, highways, environmental health or other statutory authority or agency

Network Rail Standards

NR/L2/ENV/015	Environment and Social Minimum Requirements – Design and Construction
NR/L2/ENV/122/01	Management of Biodiversity
NR/L3/ENV/044	Track Maintenance Renewal or Alteration – Used Ballast and Excavation Waste Handling
NR/L3/ENV/305	How to change utility supplies
NR/L2/ENV/120	Waste Management
NR/L2/ENV/121	Managing Environmental and Social Impact of Noise and Vibration
NR/L1/ENV/100	Network Rail Environment and Social Performance Policy
NR/L2/TRK/5201	Management of Lineside Vegetation
NR/L3/MTC/MG0194	Management of Third Party Complaints
R/L3/OPS/045/5.10	Management of Environmental Arrangements
NR/L2/ENV/123	Prevention of Pollution to Land and Water
NR/L3/OHS/0046	The Reporting, Investigation and Recording of Safety and Sustainable Development Events and Close Calls within Infrastructure Projects
NR/L3/OPS/045/4.14	Control of Environmental Incident Procedures
NR/L3/MTC/PL0215	Communicating with the Public

APPENDIX E – HSEA Contact Details

Company Name	Contact Name	Job Title	Phone Nos	Email
Network Rail				

APPENDIX F – Contract Specific Health, Safety and Environmental Reporting Metrics

No additional contract specific Health, Safety and Environmental metrics are required for this Contract.

APPENDIX G – Summary of Lifesaving Rules

Our Lifesaving Rules

Safe behaviour is a requirement of working for Network Rail.
 These Rules are in place to keep us safe and must never be broken.
 We will all personally intervene if we feel a situation or behaviour might be unsafe.

Working responsibly

-  Always be sure the required plans and permits are in place, before you start a job or go on or near the line.
-  Always use equipment that is fit for its intended purpose.
-  Never undertake any job unless you have been trained and assessed as competent.
-  Never work or drive while under the influence of drugs or alcohol.

Working with electricity

-  Always test before applying earths or straps.
-  Never assume equipment is isolated—always test before touch.

Driving

-  Never use a hand-held or hands-free phone, or programme any other mobile device, while driving.
-  Always obey the speed limit and wear a seat belt.

Working at height

-  Always use a safety harness when working at height, unless other protection is in place.

Working with moving equipment

-  Never enter the agreed exclusion zone, unless directed to by the person in charge.

PRELIMINARIES

Reports and meetings shall be provided and held in accordance with Clause 4.8 and as follows:

1. Description of the Services

(i) Description

The Services comprise of all Provision and Operation of a “Thunderbird” rescue and incident response locomotive service (including drivers), in connection with this Agreement and as more particularly described in the Technical Workslope.

(ii) Standards

The Supplier shall provide the Services in compliance with all relevant legislation, British Standards and all relevant Group and Network Rail Standards whether expressly or implied by this contract.

(iii) Delivery of the Services

In delivering the Services the Supplier shall provide all Operators and Plant (including Locomotives) other than any free issue Client Supplied or Facilitated Resources), supervision and management required to provide the Services, as more particularly described in the Technical Workslope.

(iv) Behaviours

The Client expects the highest standards of behaviour from the Contractor whilst delivering the Works, especially in those areas where reputational damage to the Client may be a risk e.g., in dealing with lineside neighbours and members of the public.

2. Site Details

(i) Site Location and Boundaries

The geographical location and boundaries of work sites shall be defined on the Purchase Order

(ii) Site Access

The Supplier shall obtain permission from the Client's Representative prior to delivering to/collecting Plant from the Site(s).

The Supplier shall recognise and ascertain the logistical requirements of exceptional loads and constructional plant and ensure that movements are made with the agreement and permission of all appropriate local authorities and routed with police escort where deemed necessary by those authorities.

All access points and routes to end on the site(s) shall be as agreed with the Client's Representative, and no others.

The Supplier shall not interfere with or obstruct any public or private rights of way or property (including, without limitation, the Client's property, railway operations and traffic, road traffic and highways or navigable waterways).

(iii) Site Access Constraints

The Supplier shall make their own arrangements and at their own cost in providing physical access to the site(s) from other than via the Client's property/lands or public property or rights of way.

(iv) Adjacent Services

The Supplier shall be aware and shall interface their Services as necessary with the any adjacent Services:

The Supplier should be aware that they may need to share access points, work sites or possession(s)

(v) Advertising Rights - Site

The Client shall have the sole right, free of charge, to exhibit or sell space for advertisements or railway notices on all work hoardings and fences on or surrounding the site(s) whether or not they have been erected by the Supplier, and the Supplier shall not exhibit or permit to be exhibited any other advertisements of any kind, other than with the express permission of the Client's Representative, for which the Client may charge a commercial fee.

3. Rules and Regulations other than the Employer's

The Supplier shall comply with the rules and regulations applied by others, including but not limited to Railway Operating Companies (Trains and Freight), London Underground Limited and Docklands Light Railway Limited, when working on or near their railway systems. The Supplier shall ascertain by careful examination of the Site and by making appropriate enquiry as necessary, the extent to which their operations may be affected by or impinge upon such other railway systems. The Supplier shall obtain copies of such rules and regulations as are applicable. The Client's Representative shall provide all reasonable assistance in this regard, upon request. The Supplier shall comply with all changes and additions to those rules and regulations, notified to him by the Client's Representative, the Client's Representative having been advised of the same, which changes and additions shall be deemed to be a variation ordered by the Client's Representative.

4. Drawings

Any drawings are listed in the Technical Worksopce.

Notwithstanding that the information given on the drawings has been obtained from the various "service authorities", the Client does not accept any responsibility for the accuracy thereof. The Supplier shall determine by their own independent enquiries, the position, line and level of any existing services.

5. Co-ordination(i) Supplier's Obligations

The Supplier shall ensure that the Client's Representative is provided with all necessary and relevant data for co-ordination with all other parties during the supply of the Services. The provision to the Client's Representative of such data shall be made at such times as to enable all other parties to be co-ordinated to meet the requirements of the programme and to ensure that the Supplier is able to achieve the completion of the Services by the scheduled date.

6. Supplier's Personnel

(i) The Supplier's Representative

The Supplier shall prepare a letter nominating the Supplier's Representative on the Supplier's official letterhead and submit it when returning the signed copy of the contract and in any case, prior to any commencement on the Site.

(ii) Supplier's Key Personnel

Solely for the purpose of continuity and assurance of an acceptable standard of performance and without prejudice to the Supplier's status as an independent supplier it is agreed that:

The Client's Representative shall designate certain of Supplier's personnel as Key Personnel, for both project management functions and safety critical works functions.

All personnel so designated shall remain in their designated capacities for as long as they remain in the Supplier's employ and shall not be relieved from this capacity until the completion of the Services, except with the prior written consent of the Client's Representative.

(iii) Personnel Register

The Supplier shall maintain a register of personnel undertaking work on the Client's property from commencement until completion of the Services. The register shall contain details of all the Supplier's personnel involved and shall be updated daily or as necessary.

The register shall contain the following information for each person, as a minimum: -

- Name
- Date of birth
- Employer/Employment history
- Position
- Any other local site-specific safety/competency certification (where applicable)
- Sentinel scheme Card No. and expiry date (where applicable)
- Qualifications and licences held (where applicable)
- Medical Certificate of Fitness
- Principal duties during the Contract

The register is subject to initial acceptance by the Client's Representative and subsequent acceptance of changes thereto. Following initial acceptance by the Client's Representative, the Supplier shall maintain the register and update it as necessary throughout the duration of the contract. Each update shall be submitted to the Employer's Representative for acceptance. The Supplier shall maintain an up-to date copy of the register in their site safety file, which shall be made available for inspection by the Client's Representative upon request.

In addition to regular updating of the above register, the Supplier shall notify the Client's Representative immediately of any proposed change in their management Key Personnel.

7. Communications, Correspondence and Meetings

(i) Communications

The contract requires single point contact between the Supplier and the Client's Representative. The Supplier's Representative shall be the person authorised by the Supplier in this respect.

(ii) Correspondence

All notices, correspondence and the like required by the contract, between the Supplier and the Client's Representative shall be signed and in writing. Transmission by E-mail as an attachment is acceptable for expediency.

All Correspondence between the Supplier and other parties appointed by, or under control of, the Client's Representative shall be through the Client's Representative unless otherwise authorised by the Client's Representative.

(iii) Start-up Meeting (Pre-Contract Meeting)

As soon as possible after contract award, the Client's Representative may convene a start-up meeting with the Supplier. This meeting shall be used to establish and clarify all details of control, administration, reporting and management of the contract, to confirm lines of communication, information flows, change control, payment certification processes and procedures, and the like.

The Supplier shall provide all reasonable assistance to the Client in the implementation of this agreement, including *inter alia* attendance at briefings and other communication forums.

The Supplier shall also co-operate with any exiting Supplier to ensure a smooth and undistruptive service transition. At the end of this agreement the Supplier shall work with any successor to ensure a smooth transition.

(iv) Progress Review and Coordination Meetings

These meetings shall be held regularly, or as otherwise agreed depending on the circumstances. The following subjects shall be discussed:

- Supplier's actual Services since the previous meeting and comparison to ordered Services.
- Outstanding action items from previous meetings, their status and resolution
- Schedule and proposed plans/orders for the next schedule period
- Technical issues
- Interfaces, critical items, and current and potential problems.
- Health, safety, quality and environment issues
- Status of Employer's Instructions
- Progress on Final Account
- Compliance with Social Value Act
- Numbers of Apprentices
- Any Other Business

Generally, meetings between the Client and the Supplier will be arranged by the Client's Representative. Meetings shall be held at the location designated by the Client's Representative and the Supplier's rates and prices are deemed to have allowed for attendance of meetings held at any location as may be reasonably designated.

Unless otherwise specified, meetings will be chaired by the Client's Representative, who may delegate responsibility for preparation of the minutes. Minutes of meetings will be drafted (and agreed) at the meeting and identify the parties required to act. Minutes will be issued prior to the following meeting for acceptance.

The Supplier shall attend as necessary account or other interface meetings. as directed by the Client's Representative, which may be in addition to the progress review meetings.

The Client's Representative may, at their discretion, issue a schedule of progress meeting dates for the contract, and the Supplier shall issue progress reports.

Key Performance Measures

The performance of the Services provided to Network Rail will be measured against Key Performance Measures.

During the term of this agreement the Client reserves the right to use the output of these Key Performance Measures as one of the factors to determine the placing of call-off orders for the hiring of Plant.

(v) Periodic Reporting

The Suppliers shall also provide periodic reports on the quantity and quality of work performed. Details to be provided shall include but not be limited to:

- Periodic Safety Reports
(see also Contract Requirements – HSEA)
- Location, types and number of Shifts completed.
- Value of Shifts completed.
- Working Hours
- Idle Hours
- Breakdowns
- Cancellations
- Incidents (measuring the quantity and severity)
- KPI report
- Asset Data

The Supplier shall maintain appropriate electronic records so as to provide the required periodic reporting and data to support the Key Performance Measures.

The periodic report shall be received within 4 working days after the last day of the period and be in the format as determined by the Client.

The Client reserves the right to ask for information relating to any Services planned to take place on the Network Rail infrastructure under this Agreement.

(vi) Meetings & Review

Notwithstanding these reviews, it is expected that the Supplier will have regular dialogue and interactions with the delivery units in which they work in order to ensure reliable and effective delivery of the service.

(vii) Operational Review Meetings

The Client and the Supplier may hold meetings to discuss ongoing operational issues in the direct supply of Plant to Network Rail.

(viii) Contract Review

The Client and the Supplier shall hold contract review meetings to review the performance of each party of its obligations under this Agreement.

Minutes from the meetings shall be forwarded to the Client's Representative for review.

These meetings shall be used to discuss KPI results.

It is intended that this review meeting be of a cross functional nature and so should include representatives from commercial, technical and operational areas.

(ix) Other Meeting & General

The Client may request other meetings during the course of this Agreement.

Prior to any meeting the Client shall compile an agenda of items suggested for inclusion by each party and shall circulate the agenda and any supporting documentation to an agreed list of attendees.

Meeting minutes shall be prepared by a nominated party at the meeting and circulated within 2 working days of the meeting.

(x) Third Party Enquiries

In the event the Supplier is requested by any party outside of this Agreement, to supply Services for use in the maintenance, renewal, construction or enhancement of the Network Rail Infrastructure which could have been provided through this Agreement, it shall inform the Client's Representative as soon as practically possible.

8. Asset Database

(i) Asset Database

The Supplier is required to hold an electronic database of all Plant and to provide such information (e.g., service history and the like) as may be necessary to be incorporated into the Client's Reliability Management Systems

9. Client's Premises

(i) Client's Premises

Where the Client provides premises for the Supplier's use, the Supplier shall be a licensee and not a tenant of such premises, and shall not have, or be entitled to, exclusive possession thereof, or be liable for any rent or other payment in respect of such use.

The Supplier shall maintain such premises in accordance with any requirements of the contract or requirements made known to the Supplier by the Client's Representative, and in compliance with any applicable law or regulations. Unless specifically detailed elsewhere in the contract, the Supplier shall pay or indemnify the Client against all utility charges relating to such premises (but not council tax or rates); and shall vacate such premises, returning the keys to the Client's Representative, promptly at the time stated in the contract or after the completion of the Services or on determination of the contract (whether or not the validity of such determination is contested), whichever is the earlier, or even earlier if so required by the Client's

Representative (which shall be deemed to be a variation ordered by the Client's Representative), leaving the premises in the same condition as when first made available to the Supplier. The Client's Representative may also substitute other premises for premises previously provided (which shall be deemed to be a variation ordered by the Client's Representative).

The Supplier shall, in relation to all such premises described in the Contract, be deemed to have satisfied himself as to their state and condition, and as to their compliance with the law applicable at the place of performance of the Contract and shall be responsible for such compliance at their own expense.

10. Cross-Hiring

(i) Cross-Hiring

The Services shall not be cross hired in whole or in part without the written consent and at the sole discretion of the Client's Representative.

11. Client's Instructions

(i) Initiation of Changes

In accordance with the Contract, all additions, omissions, or amendments to the Services provided are to be quantified and controlled in writing. Any verbal instructions shall be of nil effect unless confirmed by the Client in writing. The Client will control any changes and will require supporting data and documentation to be presented by the Supplier.

If at any time the Supplier believes that any act or omission by the Client constitutes a change to the Services not already covered by a relevant instruction, as a prerequisite of any payment the Supplier shall as soon as possible after obtaining knowledge of such act or omission or in reaching the point where it should have become apparent to a reasonably experienced supplier, or in accordance with the contract, submit a written notice to the Client's Representative detailing the basis of the request. Such request shall be accompanied with all necessary data as defined hereinafter.

The estimating efforts associated with a proposed change will not in itself be a valid basis increasing the price.

(ii) Evaluation of Changes

Such notices from the Supplier shall be reviewed by the Client's Representative who shall advise the Supplier whether:

- a) The notice is rejected, or
- b) On-hold, pending discussion/preliminary evaluation, or
- c) Issue an instruction to evaluate the change.

Upon receipt of an instruction to evaluate a proposed change, the Supplier shall address the cost and delivery implications of the change, review the total effect on the Call-Off Order and submit the details to the Client's Representative within the timescale indicated by the Client's Representative at the time of instruction, together with:

- a) A detailed substantiation of the estimated price.
- b) A brief description of the changes to the Services involved.

- c) A statement defining the latest date by which approval to proceed with the change can be given by the Client's Representative without affecting the delivery date.

Upon agreement being reached on the total effect of the proposed change, the Client's Representative shall decide upon whether or not to proceed with the change and shall advise the Supplier accordingly. If affirmative, the Client shall issue an instruction to proceed with the change.

(iii) Client's Instruction Issue

Client's Instructions will be instructed in accordance with the Contract.

(iv) Numbering of Client's Instructions

Client's Instructions will be numbered sequentially and refer to the Contract and/or the relevant Call-Off Order

The numbering sequence for Supplier generated notices shall be readily distinguishable from instructions generated by the Client. Such numbering sequences to be adopted shall be determined at the Start-up Meeting.

The Client's Representative shall maintain a log of all Client's Instructions, which shall include:

- a) Instruction Number
- b) Date of Issue
- c) Brief description of requested change
- d) Evaluation date
- e) Proposed price adjustment (if any)
- f) Estimated effect on the delivery date (if any)
- g) Date of change instruction not to proceed.
- h) Approved price adjustment
- i) Cumulative total approved price adjustments
- j) Approved effect on delivery date

(v) Site Instructions

Exceptions to the general requirement for adherence to the above procedure may be necessary from time to time. The Client's Representative may instruct the Supplier to undertake Services immediately for reasons of safety, emergency, security or practicality. This shall be done through the issue of a Site Instruction.

Each Site Instruction shall carry a unique identifying number which shall be recorded in a log together with all pertinent details and dates and the reason for issue of the Site Instruction.

A Site Instruction does not necessarily constitute an entitlement to further payment and its impact should be assessed in accordance with the contract.

12. Purchase Orders**(i) Purchase Orders**

The Client shall be responsible for specifying the Services, the Site, and the time period for which it shall be provided, but shall be assisted in this activity by the Supplier.

Purchase Orders shall be priced in accordance with the Pricing Document or as specified by the Client's Representative.

Unless in an emergency no Services shall take place until the Supplier receives a Purchase Order.

An emergency is a situation which needs to be made safe immediately in order to eliminate any risks to the public or the infrastructure. It may be where the Infrastructure has been affected by influences which have rendered it impossible to pass trains or that will affect performance or where an incident has rendered the infrastructure unsafe or has the potential to cause harm or injury to life.

Purchase Orders will be submitted to the Supplier electronically. The Supplier will provide the Client's Representative with an electronic address to be used for all Purchase Orders.

If the Supplier provides services to the Client in more than one delivery unit then the Supplier will provide electronic addresses for Purchase Orders appropriate to each delivery unit.

If at any time the Supplier considers that the Purchase Order should not be carried out, terminated or amended for any reason, the Supplier shall advise the Client's Representative immediately in writing.

The Supplier should note that only Services ordered by the Client's Representative shall be executed under this contract. Any Services instructed by third parties shall have no effect unless confirmed in writing by the Client's Representative.

13. Payment Substantiation

All applications for payment shall be supported by the following where applicable:

- A valid purchase order.
- Carbonated signed Daily Work Returns
- Approved timesheets (Photocopies are not acceptable) for each Purchase Order.
- Copies of invoices to support any items reimbursed at prime cost e.g specialist plant, materials on site, professional fees, and the like.

14. Audit Requirements

(i) Audit Requirements

The Supplier shall arrange at their own expense to undertake a programme of annual procedure audits to ensure its continuous compliance with applicable Industry Standards.

The Supplier shall make any audit report prepared available to the Client's Representative.

The report shall include such information as is required to demonstrate that:

- a. The Supplier's procedures are adequate for the purpose of ensuring that it complies with its obligations under this Agreement; and
- b. Where such audit report or any prior audit report has indicated inadequacies in the Supplier's procedures or its compliance with those procedures, that the supplier either has remedied the said inadequacies, in the process of remedying them, or has proposed a reasonable remedy for such inadequacies.

The Client's employees shall upon request be given access by the supplier at any time during reasonable office hours as agreed with the Supplier in order to verify records of the Supplier including inter alia; compliance with standards and invoiced prices from the Supplier to the Client in the pursuance of this Agreement.

15. Insurance

(i) General

The Supplier is to provide insurance cover in accordance with the requirements of the Contract. Upon award of the Contract, the Supplier shall cause its insurer to certify that the required insurance covers are in force.

(ii) Client's Insurance

Where the contract requires the Client to arrange insurance, such policies will be provided in accordance with the Project Insurance Manual (Attachment A – Project Insurance Manual)

The Supplier shall follow the procedures set out in the Project Insurance Manual and report, within 5 working days, all insurable claims to the Client, irrespective of the value or the excess detailed in the Project Insurance Manual.

For those claims that do not exceed the excess amount detailed in the Project Insurance Manual, the Supplier shall report the progress and timely resolution of such claims to the Client within 5 working days.

For those claims that exceed the excess amount detailed in the Project Insurance Manual, The Supplier undertakes to assist the Client by all means that may be deemed as reasonably necessary by the Client to ensure the earliest resolution of insurance claims. The Supplier further undertakes to mitigate the loss incurred by the Client by all means that may be deemed as reasonably necessary.



PROJECT INSURANCE MANUAL [November 2024]

This document is the property of Network Rail

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1. INTRODUCTION

This Project Insurance Manual outlines the insurance policies that have been arranged by Network Rail as follows:

- Construction "All Risk" Insurance and Terrorism Insurance
- Third Party Liability Insurance
- Insurance of Network Rail's Property

and includes procedures and instructions for the notification and handling of claims under these insurance policies.

The insurance policies arranged by Network Rail extend to cover its contractors, subcontractors, of any tier and suppliers, manufacturers and consultants for their site activities, provided that each subcontract cascades the cover (or provides for a waiver of subrogation in their favour) and no cost should be included in their prices for insurance cover to the extent it is provided by the Network Rail arranged insurance policies.

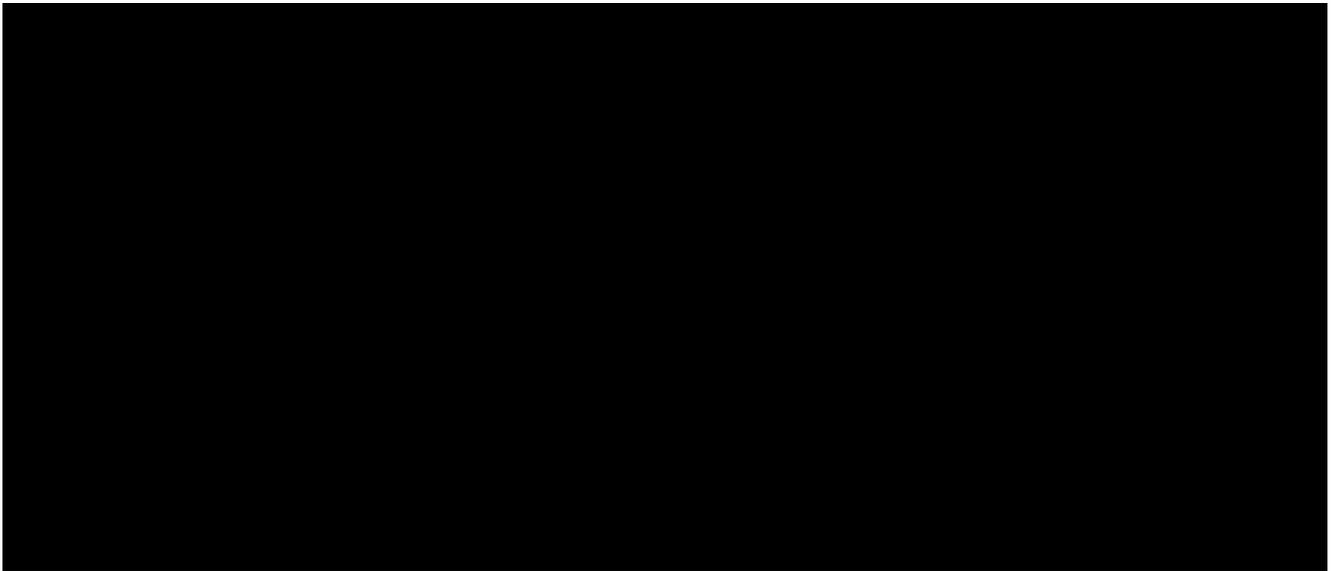
Network Rail's contractors, subcontractors, suppliers, manufacturers and consultants should provide and maintain insurance policies against such other exposures as specified in their contract with Network Rail and/or they deem necessary, including but not limited to:

- Liability to their employees for injury sustained out of and in the course of their employment
- Professional liabilities (if undertaking professional activities, e.g. design)
- Loss or damage to their owned or hired construction plant and equipment and/or temporary buildings
- Liability under the Road Traffic Act (in Scotland the Roads (Scotland) Act 1984) arising out of motor vehicles registered for use on public roads.

The key point about the policy excess (Construction “All Risks”, Terrorism and Third Party Liability) is that unless Network Rail has caused the claim then the contractor is responsible for the payment of the excess. That would be the case if the contractor bought insurance itself. The attribution of the excess is not fault based. The contractor may not have caused an event but that does not change the obligation. Whether the contractor ultimately meets the cost of the excess or if it forms part of the project costs will turn on the individual contract terms and should be checked in all circumstances.

The default contract limit is [REDACTED] Specific cover has to be arranged for contracts above this limit. There are some restrictions around higher risk activities, such as tunnelling. Contracts involving such activities should be referred to Network Rail Group Insurance for further advice – if in doubt, please ask. You should do this ideally at the investment planning stage.

Enquiries should be directed to:



2. SUMMARY OF INSURANCE COVERAGE

CONSTRUCTION "ALL RISKS" INSURANCE

This insurance provides an indemnity against the cost of reinstatement of physical loss or damage to the works, temporary works and materials.

Insured:

Employer (1) Network Rail Limited and/or Network Rail Infrastructure Limited and/or their Subsidiary Companies and/or their Associated Companies
(2) Any organisation or entity, including but not limited to local authorities, passenger transport authorities, train operating companies and railway infrastructure operators, by whom the Contractor (1) has been engaged in connection with the project

Contractor (1) Network Rail Limited and/or Network Rail Infrastructure Limited and/or their Subsidiary Companies and/or their Associated Companies
(2) Alliance Partners and/or Framework Contractors
(3) Project Managers, Management Contractors and/or Construction Managers
(4) Project Managers, Management Contractors and/or Construction Managers in respect of the Crossrail On-Network Works Project
(5) All Contractors and/or Sub-Contractors of any tier
(6) Supplier manufacturers and/or consultants of any tier and/or others engaged to provide goods or service, in respect of their manual site activities only
For their respective rights and interests.

Cover: "All Risks" of physical loss or damage to the permanent works and Temporary Works (as defined below) including materials and goods incorporated or for incorporation therein all being the property of the Insured or for which the Insured is responsible or has instructions to insure.

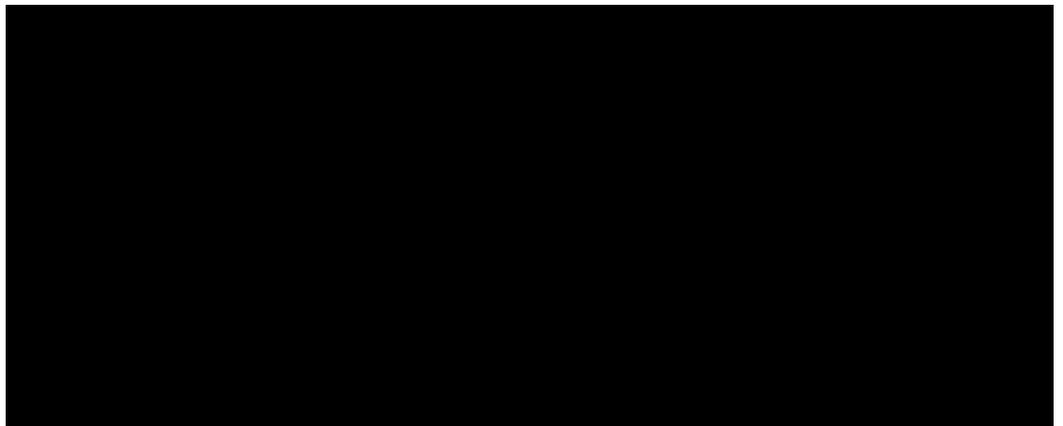
Includes physical loss or damage arising from defective design, materials or workmanship for the benefit of the Employer and the Contractor (1), (2), (3) (4) and (5).

For the purpose of the insurance "Temporary Works" means all structures and their materials which are not intended to form part of the permanent works, but which are intended to provide working access to the site or to the permanent works or which are intended to provide support to the permanent works under construction but shall not mean site accommodation and contents. Without limiting the generality of the foregoing, it is specifically agreed that shuttering, formwork, scaffolding, cofferdams, sheet steel piling, temporary fabrication yards, temporary bridges and temporary roads facilitating the performance of the project shall be regarded as Temporary Works.

Territorial Limits: Anywhere in Europe.

Sums Insured: [REDACTED] each and every loss any one contract consequent upon one source or original cause which are payable in addition.

Excesses:



Insurers: Royal Sun Alliance and Others

Policy Number: [REDACTED]

For full details of the terms, conditions, and exceptions applicable to this insurance reference must be made to the policy wording, a copy of which is available on request.

A more detailed Synopsis of Cover is available on request and can be provided to contractors at tender stage.

Terrorism cover for contract works is also provided under this Policy.

THIRD PARTY LIABILITY INSURANCE

This insurance provides an indemnity in respect of legal liability for third party injury and third party property damage.

Insured:

- 1) Network Rail Limited and direct and indirect subsidiaries including Network Rail Infrastructure Limited.
- 2) Any Contractor engaged under contract by Network Rail Limited and/or Network Rail Infrastructure Limited where under the terms of the contract Network Rail Limited and/or Network Rail Infrastructure Limited has undertaken to provide and maintain insurance for the benefit of the Contractor.
- 3) In respect of construction, erection, installation, alteration, repair, refurbishment, renovation projects or works where under the terms of the contract for such works Network Rail Limited and/or Network Rail Infrastructure Limited has undertaken to provide and maintain insurance for the benefit of all interested parties:
 - a. Alliance partners, project managers, management contractors and/or construction managers;
 - b. All other contractors and/or sub-contractors in any tier;
 - c. Suppliers, manufacturers and/or professional consultants in any tier in respect only of their activities carried out at the site where the construction, erection, installation, alteration, repair, refurbishment, renovation works are being physically undertaken

Cover:

Legal liability of the Insured to pay damages and claimants' costs and expenses in respect of:

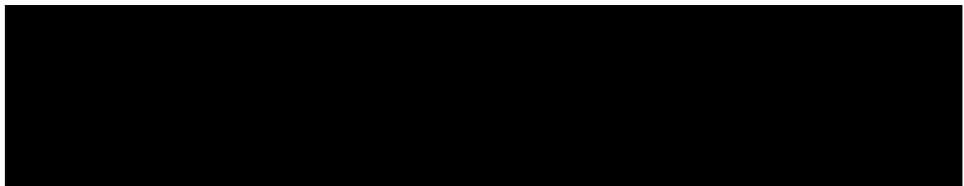
- (i) death or bodily injury to or illness or disease contracted by any person
- (ii) loss of or damage to property
- (iii) nuisance, trespass, obstruction, loss of amenities or interference with any right of way, air, light, water, or other easement happening during the period of insurance and arising in connection with the works

Territorial Limits:

Worldwide excluding physical site works undertaken in the United States of America or Canada

Limit of Indemnity:

Excess:



Insurers: Network Rail Insurance Ltd and QBE UK Ltd

Policy Number: 

For full details of the terms, conditions and exceptions applicable to this insurance reference must be made to the policy wording, a copy of which is available on request.

A more detailed Synopsis of Cover is available on request and can be provided to contractors at tender stage.

INSURANCE OF NETWORK RAIL'S PROPERTY

This cover provided by insurance or self-insurance arrangements, indemnifies the Insured against the cost of reinstatement of physical loss or damage to the property of Network Rail and Network Rail's business interruption costs consequent upon such physical loss or damage.

- Insured:**
- a) Network Rail Limited and its direct and indirect subsidiaries, including Network Rail Infrastructure Limited, and any associated company or joint venture in which such are involved (the Policyholder)
 - b) Any train operating company or other lessee of the Policyholder's property
 - c) Additional insureds for their respective rights and interests.

- Cover:** Indemnity in respect of:
- a) All risks of direct physical loss or damage including theft, subsidence and terrorism
 - b) Loss of gross revenue, rent receivable, payment of penalty sums and additional costs of working incurred by the Policyholder on account of interruption to or interference with its business consequent upon physical loss or damage to property indemnified under paragraph a).

- Waiver of Subrogation:** In the event of a claim arising under this insurance, the insurer agrees to waive any rights, remedies or relief, to which it might become entitled by subrogation against:
- a) any maintenance, renewals or enhancement contractor who is a joint insured under the Network Rail third party liability insurance programme (as summarised on page 8)
 - b) any other party to the extent required by a contract or agreement entered into by Network Rail.

Territorial Limits: Worldwide.

Sums Insured: [REDACTED] any one occurrence

Excess: [REDACTED]

Insurers: Network Rail Insurance Ltd & RSA

This summary is subject to the terms, conditions and exceptions of the Policy.

3. CLAIMS

INSURANCE CLAIMS NOTIFICATION & HANDLING INSTRUCTIONS

3.1 Introduction

These instructions are intended to make site personnel aware of the procedures in place for the notification and handling of claims under the insurance cover arranged by Network Rail. It is important that the procedures are complied with so that all insured parties are adequately protected, and the position of the insurers is not prejudiced.

It is important that the requirements of the procedures are followed and communicated to all parties who have an interest under the insurance policies arranged by Network Rail. In addition to the notification of claims to the insurers, it is necessary that the requirements of Claims Allocation and Handling Agreement, consolidated as at 1st November 2015 and in England and Wales (but not in Scotland) the Legal Aid, Sentencing and Punishment of Offenders Act (LASPO) and its attendant new Civil Procedure Rules (Lord Justice Jackson's reforms), are met.

It should be noted that these procedures are a claims guide only and nothing contained herein overrides the terms and conditions of the policies which remain paramount in the consideration of any claim.

Claims handling flow charts are provided for ease of reference in Appendix 1 (Construction "All Risks" claims) and Appendix 2 (Third Party Liability claims).

3.2 Responsibility

It is the responsibility of all site management, both Network Rail and the Contractor, to make sure that these procedures are adhered to and that all incidents of loss, damage or injury are reported as detailed herein.

It is the responsibility of all site personnel, both Network Rail and the Contractor, to take reasonable steps to mitigate further loss in the event of an incident occurring.

3.3.1 Claims for loss of or damage to Network Rail's property

Incidents of damage to Network Rail's existing property resulting from works carried out by its contractors (or others) should be notified immediately to the relevant Network Rail project team and the Regional Claims Managers (RCM's) in the Routes as this is insured separately.

3.3.2 All other claims

All other claims are to be submitted to the appointed Loss Adjuster - Charles Taylor Adjusting Limited as detailed in the following claims procedure which has been prepared by Charles Taylor Adjusting in conjunction with Network Rail, to provide guidance in the event of an incident which may give rise to an insurance claim. The procedure gives advice on claims handling from notification of an incident through to settlement and notes on suggested measures to be taken to assist with the processing of a claim.

For the avoidance of doubt this procedure applies to the following categories of claim which Charles Taylor Adjusting is appointed to handle:

- (i) Loss of or damage to Contract Works
- (ii) Loss of or damage to Third Party Property (not property of Network Rail) (iii) Third Party Injury (but not Employers Liability)

3.3.3 Uninsured Losses and Excess

Until practical completion the Works are at the risk of the contractor and therefore all uninsured losses are to be paid by the contractor including excesses applicable to insurance claims. For example, any excess applicable to insurance related claims for storm, tempest or flood are payable by the contractor.

Cost Reimbursable Contracts

The cost of repairing, replacing or reinstating loss of or damage to the contract works and/or materials for incorporation therein that is the subject of cover under Network Rail's Construction "All Risks" Insurance programme is not an "admissible cost". Such cost must be paid by the Contractor and is not reimbursed.

The Contractor receives the amount recovered from insurers on account of the insurance claim made under the Construction "All Risks" Insurance programme and suffers the uninsured cost, i.e. essentially the excess applicable to the claim under the terms of the Construction "All Risks" Insurance programme.

Target Cost Contracts and Alliance Agreements

The cost of repairing, replacing or reinstating loss of or damage to the contract works and/or materials for incorporation therein that is the subject of cover under Network Rail's Construction "All Risks" Insurance programme is admitted to Actual Cost.

The amount recovered from insurers on account of the insurance claim made under the Construction "All Risks" Insurance programme is credited to Actual Cost.

Thus, Actual Cost is increased by the uninsured cost, i.e. essentially the excess applicable to the claim under the terms of the Construction "All Risks" Insurance programme. The Target Cost is not increased and, therefore, the uninsured cost falls within the "pain/gain share" arrangements.

(1) What should be notified?

Initial notification should be made directly to Charles Taylor Adjusting using the Internet based reporting system via <https://networkrail.cta.ctplc.com/> as detailed in paragraph (2)(b), of all:

- loss or damage to permanent and/or temporary works and materials for incorporation therein
- construction plant/equipment, temporary buildings and contents owned or hired- in by Network Rail

- liability incidents, i.e. those involving injury to third parties and/or damage to property belonging to third parties.

In the event this is not possible, contact should be made by phone, email and/or fax with any of the adjusters listed in paragraph (2)(d).

It is important that the name and addresses of all witnesses to an incident are recorded along with a good description of the specific area and the local conditions.

(2) How to Notify Claims

- (a) In the event of any incident likely to give rise to a claim, notification should be made immediately to:

Charles Taylor Adjusting – Construction & Engineering Team
The Minster Building, 21 Mincing Lane, London, EC3R 7AG

For the attention of 

Contacts: 

- (b) Loss Notification

New claims and incidents which may give rise to a claim under the Network Rail Owner-Controlled Contractors All Risks or Contractors' Liability Policies should be reported via the online web-enabled loss notification system, by following the guidelines below:

- 1.1 Go to the website: <https://networkrail.cta.ctplc.com/>
- 1.2 Insert your e-mail address and, if prompted, your full name.
- 1.3 Complete the online loss notification form.
- 1.4 Add any documents that you wish to submit with the loss notification via the attachments tab at the bottom of the form.
- 1.5 Once the form is complete and any attachments uploaded, press submit.

The person who logged the claim will receive an immediate response confirming receipt of the notification.

If you have no access to the internet for any reason, or require urgent claims notification assistance, contact should be made by telephone or email with the Charles Taylor Adjusting team as detailed below.

In the unlikely event that neither of the above are available, please telephone our switchboard on 0207 623 1819, and ask to be put through to [REDACTED] or any other member of the Construction and Engineering Team.

(3) Serious Incidents

Incidents involving significant loss or damage, or serious personal injury or death must be reported to Charles Taylor Adjusting by phone.

(4) Criminal loss/damage

Theft losses and those involving malicious damage and any other form of crime should be reported to the police as soon as possible and a crime reference number obtained from the investigating police officer together with his name, number and station.

(5) Legal Documents and Letters of Claim

Very strict rules have recently been introduced for the handling of personal injury claims in England and Wales (Lord Justice Jackson's reforms). These replace previous rules, which themselves laid down onerous requirements as regards the time allowed for the investigation of claims. Non-compliance with these new rules will have serious financial and reputational consequences. The new rules do not apply to claims from third parties for loss of or damage to their property.

In the case of personal injury claims in future you may receive either **(i)** a formal "Claim Notification Form" from the claimant's solicitors, or **(ii)** an enquiry from the claimant's solicitors asking you to identify your public liability insurer.

(i) You must acknowledge receipt of the "Claim Notification Form" (by fax or e-mail) **within 24 hours**. In that acknowledgement **you** must tell the claimant's solicitors that you have forwarded the "Claim Notification Form" to Charles Taylor Adjusting who represents your public liability insurer*. **You** must **immediately** e-mail a copy of the "Claim Notification Form" to [REDACTED] of Charles Taylor Adjusting because Charles Taylor Adjusting **must** then acknowledge the "Claim Notification Form" on behalf of your public liability insurer **within a further 24 hours**.

You should include in your email to [REDACTED] the name, mobile and landline telephone numbers and e-mail address of a manager or senior supervisor who was on site at the time of the accident (whether it was reported to you or not) who can answer questions raised by Charles Taylor Adjusting.

(ii) You must reply to the claimant's solicitor's enquiry **immediately** informing them that Charles Taylor Adjusting is instructed to represent your public liability insurer and **you** should tell the solicitors that any claim can be notified on the Portal with Charles Taylor Adjusting as the Compensator, whose portal reference is D00305...*

(* Suitable wordings for the acknowledgement to a "Claim Notification Form" and response to a claimant's solicitor's enquiry are attached in the Appendix 4.)

Charles Taylor Adjusting has 30 working days to give the solicitors an answer to the allegations made against you. That time limit is absolute and inextensible. It is a very short period in which to investigate a claim and, therefore, having received a "Claim Notification Form", Charles Taylor Adjusting will require you to provide full information such as:

- All documents generated by your company concerning the accident including, but not limited to, the relevant Works Package Plan, Task Briefing Sheet, Permit to Work, internal accident report/s, statements recorded after the accident, training and induction records, photographs, plans and so on.
- A copy of any relevant sub-contract.

(6) Notice of Adjudication under Housing Grants, Construction and Regeneration Act 1996

Upon receipt of Notice of Adjudication relating to any circumstance which has given to or may give rise to a claim under the Construction All Risks Insurance provide immediate notice (or by the second working day after receipt) thereof by telephone to [REDACTED] on 020 3124 7350.

A Notice of Adjudication means any notice issued by a party to a contract to which the Housing Grants Construction and Regeneration Act 1996 applies stating an intention to refer to dispute under the contract adjudication.

(7) Emergency Repairs

The insurers accept that essential emergency repairs to the damaged property may have to be carried out urgently and before Charles Taylor Adjusting has had an opportunity to carry out an inspection, in order to mitigate further damage or loss or for reasons of safety. However, such emergency repairs must be reasonable in relation to the extent of the loss or damage that has been suffered.

(8) Access by Loss Adjuster and others

The insurers and/or Charles Taylor Adjusting must be allowed reasonable access to inspect damaged property and such property should not be destroyed or repaired until they have confirmed it is in order to do so. However, if it is essential to undertake repairs to the damaged property prior to Charles Taylor Adjusting's inspection, e.g. as in the case of emergency repairs, photographs of the damage should be taken as a record so as to assist in evidencing the extent of the claim.

Full co-operation with Charles Taylor Adjusting and any request for documentation to support a claim, must be given as Network Rail will monitor the progress of every loss, to ensure the matter is brought to a swift conclusion and insurance moneys are recovered from insurers within a reasonable time.

APPENDICES

APPENDIX 1

Claims Handling in respect of all Construction “All Risks” Claims on Network Rail Projects

Physical loss or damage to the works, temporary works
and materials > GBP 75,000

Report to Charles Taylor Adjusting Limited
(Loss Adjuster) as per the Claims Notification
Procedures within the Project Insurance Manual



Charles Taylor Adjusting Limited will review
and confirm validity of claim directly with the
party who incurred the loss



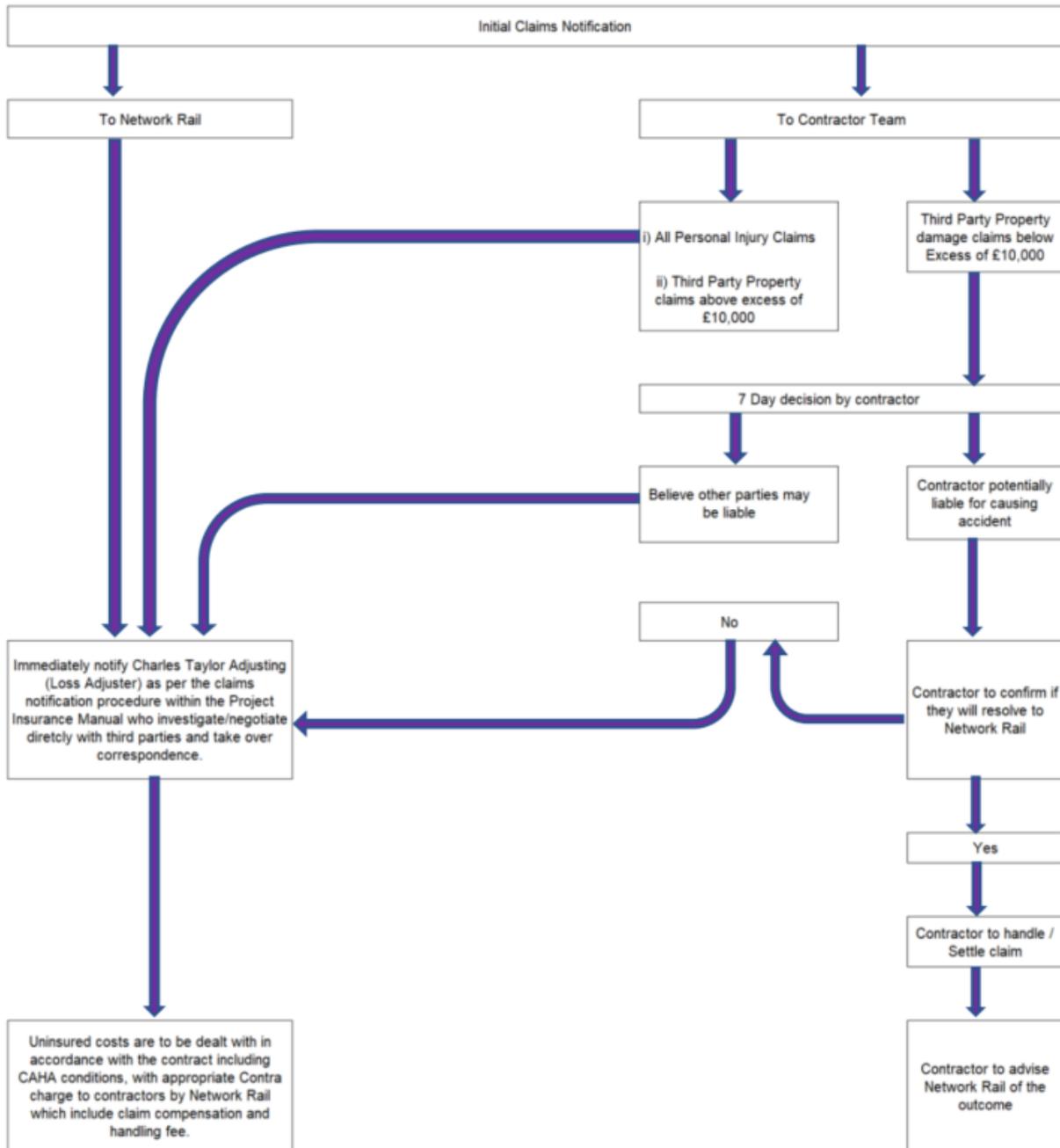
Charles Taylor Adjusting Limited report to Insurers



Insurers settle claim net of policy excess to the
party who incurred the loss who is also responsible
for the cost of the policy Excess / Uninsured losses following
the process as stated in the Project Insurance manual

APPENDIX 2

Claims Handling in respect of all Third Party Claims on Network Rail Project including those below excess (£10,000)



**APPENDIX 3
NETWORK RAIL
CONSTRUCTION INSURANCE - CLAIM FORM**

PROJECT

NETWORK RAIL ROUTE

CONTRACTOR

EXACT LOCATION OF INCIDENT

CIRCUMSTANCES

NATURE OF DAMAGE / INJURY

DATE OF INCIDENT

**CLAIMANT'S NAME & ADDRESS
(for Liability claims)**

CONTACT NAME

COMPANY NAME

COMPANY ADDRESS

TELEPHONE

MOBILE

FAX

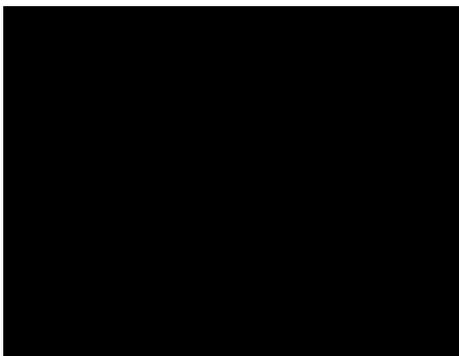
E-MAIL ADDRESS

Signed..... **Name**.....

Dated..... **Position**.....

Please attach any sketches, photographs, correspondence, witness statements, account book entries, etc.

Return to:



APPENDIX 4

ACKNOWLEDGEMENT TO “CLAIM NOTIFICATION FORM”

Without Prejudice

Dear Sirs

Re: Alleged Accident to [insert name of Claimant]

We acknowledge your Claim Notification Form dated [insert date] in respect of the above. The Claim Notification Form has been forwarded to Charles Taylor Adjusting Limited, The Minster Building, 21 Mincing Lane, London, EC3R 7AG, who represents our insurers.

Yours faithfully

[Signature]

RESPONSE TO SOLICITOR’S ENQUIRY

Without Prejudice

Dear Sirs

Re: Alleged Accident to [insert name of Claimant]

In response to your enquiry we can confirm that our insurers are represented by Charles Taylor Adjusting Limited, The Minster Building, 21 Mincing Lane, London, EC3R 7AG. Any claim can be notified on the Portal with Charles Taylor Adjusting Limited as the Compensator, whose portal reference is D00305

Yours faithfully

[Signature]

CAHA

CLAIMS ALLOCATION AND HANDLING AGREEMENT

Consolidated as at 1 March 2019

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CLAIMS ALLOCATION AND HANDLING AGREEMENT

This Agreement is made on 1 April 1994 between:

- (1) The several persons named in Part I of Schedule 6 (the “CAHA Parties”); and
- (2) The person named in Part II of Schedule 6.

WHEREAS

- (1) The CAHA Parties have agreed to allocate liability for certain claims brought against any of them other than by a CAHA Party in accordance with the terms set out below.
- (2) The CAHA Parties have appointed the Access Disputes Committee to monitor the performance of the Registrar (as defined in Clause 1.1) and to represent them in discussions with the Registrar over its performance.
- (3) The CAHA Parties have agreed certain provisions as to liability for property damage and consequential loss caused by one of them to another.
- (4) This Agreement incorporates the amendments made pursuant to Clause 19.1 by a side letter dated 23 February 1996 and Supplemental Agreements dated 29 August 1996, 30 August 1997, 1 April 1998, 1 April 2004 (First), 1 April 2004 (Second), 1 December 2009, 1 April 2011, 1 November 2015 and 1 March 2019.

NOW IT IS HEREBY AGREED AS FOLLOWS:

1 Definitions and Interpretation

1.1 Definitions

- | | |
|-----------------------------|--|
| “Access Disputes Committee” | means the body constituted under the Access Dispute Resolution Rules, as amended from time to time. |
| “Advance Payment” | means any payment which is required to be made by a CAHA Party in accordance with Article 13 of the Regulation. |
| “Allocation Chair” | means the individual appointed by the Access Disputes Committee pursuant to Access Dispute Resolution Rule J20 or another individual appointed as a substitute by the Secretary to discharge the role of the Allocation Chair in respect of a specific matter. |
| “CAHA Claim Handler” | means a CAHA Party, or a person acting on its behalf, handling any claim pursuant to this Agreement. |

“Code of Practice”	means the Code of Practice for the Handling of Claims made by the Public against the Railway Industry set out in Schedule 4 to this Agreement (as amended from time to time).
“Discrimination Claim”	means any claim which includes an allegation of discrimination under the Equality Act 2010 (or any subordinate legislation).
“Employee”	means any individual who works for another person, whether under a contract of service or apprenticeship or otherwise, but does not include anyone who provides services under a contract for services. It includes both full-time and part-time employees.
“Final Liability”	has the meaning set out in Clause 3.
“Independent Contractor”	means a person who is not a CAHA Party and with whom a CAHA Party contracts for the supply of goods or services in connection with the provision of railway services.
“Intellectual Property Rights”	means patents, trade marks, rights in designs, copyright, rights in databases (whether or not any of these is registered) and other rights of a similar nature having a similar effect to any of those which may subsist anywhere in the world.
“Lead Party”	means the person for the time being designated as Lead Party pursuant to Clause 9.2.
“Major Incident”	means any event or circumstance, or combination of events or circumstances, related to which one or more claims arise and where one or more of the following applies: <ul style="list-style-type: none"> (a) the Final Liability for all Relevant Claims is, or is likely to be, over £10 million; or (b) the amount of Outgoings incurred, or reasonably expected to be incurred, by the Lead Party: <ul style="list-style-type: none"> (i) in aggregate, prior to the determination of Final Liability, exceeds £2 million; or (ii) in any calendar year prior to that time, exceeds £1 million.
“the NLA”	means the loss adjuster referred to in Clause 7.5(a).
“Nuclear Claim”	means a claim, or a part of a claim, which (if proved) would fall within the compensation provisions of the Nuclear Installations Act 1965.

“Nuclear Matter”	means, subject to any exceptions which may be prescribed:
	<ul style="list-style-type: none"> (a) any fissile material in the form of uranium metal, alloy or chemical compound (including natural uranium), or of plutonium metal, alloy or chemical compound, and any other fissile material which may be prescribed; and (b) any radioactive material produced in, or made radioactive by exposure to the radiation incidental to, the process of producing or utilising any such fissile material as aforesaid.
“the ORR”	means the Office of Rail and Road or its successor from time to time.
“Outgoings”	<p>means the aggregate from time to time of all:</p> <ul style="list-style-type: none"> (a) legal and other professional fees and other costs, expenses and disbursements (including in-house legal costs but not the cost of management time or general overheads) incurred in the defence or management of Relevant Claims; and (b) payments made to persons under a judgement, decree or settlement in respect of Relevant Claims.
“Potentially Liable Party”	<p>means a CAHA Party (including any Independent Contractor treated as a CAHA Party in relation to a particular claim by virtue of Clause 15.2):</p> <ul style="list-style-type: none"> (a) who, the Registrar believes, may be liable for some or all of a claim, if proved, or might have been were it not for the Regulation; or (b) who is treated as a Potentially Liable Party as provided for in Clause 9.1.
“Prescribed Rate”	means the base rate from time to time of The Royal Bank of Scotland.
“the Registrar”	means the person for the time being identified in Part II of Schedule 6.
“the Regulation”	means Regulation (EC) No 1371/2007 of the European Parliament and of the Council of 23 October 2007 on rail passengers’ rights and obligations.

“Relevant Claim”	means a claim which falls within Clause 2.1.
“Review Date”	has the meaning set out in Clause 16(b).
“RPI Percentage”	means at any Review Date the difference, expressed as a percentage, between: (i) the average level of the Retail Price Index (all items) published by the Office for National Statistics (“RPI”), or any index substituted by such office, for the calendar year immediately preceding that Review Date (“the Preceding Year”) (calculated by adding the 12 monthly indices and dividing by 12); and (ii) the average level of the RPI or that substituted index for the calendar year immediately preceding the Preceding Year (calculated in the same manner). If RPI for any relevant month shall not have been published prior to the Review Date, or there is a material change in the base composition of RPI, then the Access Disputes Committee may agree to such other index as it deems appropriate.
“the Threshold”	has the meaning set out in Clause 3.2.
“Days”	includes, and “working days” excludes, weekends and bank holidays.

1.2 Interpretation

In this Agreement, unless the context otherwise requires:

- (a) terms and expressions defined in the Railways Act 1993 and the Railway (Licensing of Railway Undertakings) Regulations 2005 shall have the same meaning in this Agreement;
- (b) references to any enactment (including any subordinate legislation) shall be construed as references to that enactment as for the time being amended or to any enactment for the time being amending or replacing the same;
- (c) references to clauses and schedules are to clauses and schedules of this Agreement. The schedules form part of this Agreement;
- (d) the headings are for convenience only and shall not be taken into consideration in the interpretation of this Agreement; and
- (e) words importing the singular shall include the plural and vice versa. Words importing the masculine shall include the feminine.

2 Allocation of Liabilities

2.1 Liability for any claim which:

- (a) is brought against
 - (i) any CAHA Party or
 - (ii) the Registrar, in its capacity as such;
- (b) arises in connection with the operation of railway assets or on land owned or controlled by a CAHA Party which is or was at the relevant time used in connection with the operation of railway assets;
- (c) is not a claim which arises out of, or is connected with, a contract between the claimant and a CAHA Party, other than a contract
 - (i) of employment or services, but only insofar as the claim relates to personal injury, death or discrimination suffered by the claimant,
 - (ii) for the parking of a motor vehicle, or
 - (iii) for the carriage of persons, accompanied motor vehicles or personal belongings by rail;
- (d) is not a claim by a passenger (or consignor of unaccompanied personal belongings) for delay or the consequences of delay;
- (e) is not a claim where the cause of action occurred prior to 1 April 1994; and
- (f) is not a claim, or part of a claim, which (if proved) would fall within the compensation provisions of the Nuclear Installations Act 1965,

(including the costs of defending the claim and any liability to the claimant for interest and his costs) shall be allocated as follows.

2.2 If the amount of the Final Liability is equal to or less than the Threshold, unless the CAHA Parties concerned with a particular claim or category of claims agree otherwise, the liability shall be borne as follows:

- (a) liability for a claim brought by an Employee or former Employee of a CAHA Party who suffers loss or damage in the course of his employment with that CAHA Party - borne by the CAHA Party who employs the Employee or employed him at the relevant time;
- (b) liability for a claim brought by either:
 - an Independent Contractor of a CAHA Party who suffers loss or damage in the course of his work for that Party, or

- an Employee or former Employee of any such Independent Contractor who suffers loss or damage in the course of his employment with such Independent Contractor in carrying out that Contractor's work for the CAHA Party -

borne by the CAHA Party for whom the Independent Contractor is working.

(a) and (b) above shall apply whether or not the Employee or Independent Contractor would otherwise fall within one of the categories of claimant set out in this Clause 2. For these purposes an Employee's course of employment does not include time spent travelling to and from his usual place of work, but does include time spent travelling from one place of work directly to another place of work;

- (c) liability for claims not falling within (a) and (b) above shall be borne in accordance with Schedule 1, unless the CAHA Parties concerned with a particular claim or category of claims agree otherwise. Where a claim is of a type not mentioned in that Schedule, liability shall rest with the CAHA Party liable in law (or who would be were it not for the Regulation) and where more than one CAHA Party is potentially liable, the Lead Party procedures shall be applied to determine liability allocation.

- 2.3 If the amount of the Final Liability exceeds the Threshold, liability shall be borne by the CAHA Party or Parties which would be liable for the loss at law (or who would be were it not for the Regulation).
- 2.4 A person to whom an Advance Payment has been made by a CAHA Party shall be treated, for the purposes of Clause 2.1(a), as having brought a claim against that CAHA Party.
- 2.5 Discrimination Claims shall be deemed to have a Final Liability that exceeds the Threshold for the purposes of this Agreement.

3 Final Liability and Threshold

- 3.1 The Final Liability shall be:
 - (a) any amount paid by way of an Advance Payment and any further amount required to be paid to a claimant by the CAHA Parties under a judgment, decree or settlement in respect of a claim, aggregated with
 - (b) the amount so paid in respect of all other claims made against the Registrar or CAHA Parties resulting from the same event or circumstance,

in each case including interest but excluding costs, expenses and disbursements.

- 3.2 The Threshold in respect of the Final Liability shall be [REDACTED]

4 [Intentionally left blank]

5 General Obligations of CAHA Parties

- 5.1 Each CAHA Party shall make available, in a manner approved by the ORR, information explaining that claims by members of the public falling within Clause 2.1 should be addressed to the Registrar and giving details of the Registrar's name, address and telephone number.
- 5.2 A CAHA Party shall be entitled to appoint a person to handle on its behalf any claim falling within Clause 2, shall advise the Registrar of the name and address of any person so appointed, and shall procure that such person complies with all obligations of a CAHA Claim Handler contained in this Agreement.
- 5.3 Each CAHA Party hereby grants to the other CAHA Parties and the Registrar for the duration of the term of this Agreement and solely for the purposes of performing the obligations under this Agreement a non-exclusive, royalty free licence (or sub-licence if appropriate) of, and shall make available to the other party, all Intellectual Property Rights which are:
- (a) owned by such party; or
 - (b) subject to Clause 5.4, licensed to or used by such party

to the extent that such Intellectual Property Rights are reasonably required by each party for the purpose of performing its obligations under this Agreement.

For the avoidance of doubt, no party shall be entitled to use the Intellectual Property Rights of another for any purpose other than as required to perform its obligations under this Agreement unless otherwise agreed between the parties concerned.

- 5.4. To the extent that the consent of any third party is required in connection with the grant of any licence or sub-licence of Intellectual Property Rights licensed to or used by a relevant party to this Agreement, that party shall use all reasonable endeavours to obtain such consent as soon as reasonably possible.

6 The Registrar

(A) Authorisation

- 6.1 Without prejudice to Parts (C) and (D) of this clause, each CAHA Party hereby irrevocably authorises the Registrar for the time being to accept on its behalf service of proceedings and any other notification of claims falling within Clause 2.1 which arise out of events or circumstances occurring while the CAHA Party concerned is a party to this Agreement and (if and insofar as such further authority is needed) to carry out all other functions assigned to it under this Agreement.

(B) General Rights and Obligations

- 6.2 The Registrar shall comply with its obligations set out in Schedule 2.
- 6.3 Each of the CAHA Parties and the Registrar agree to comply with the Intellectual Property provisions set out in Schedule 2.

(C) Assignment and Change of Control

6.4 No part of the business of the Registrar shall be disposed of and the Registrar shall not assign or charge any part of the benefit of, or its rights or benefits under, this Agreement or delegate or sub-contract the performance of any of its obligations hereunder, in each case without obtaining the prior written consent of the Secretary of the Access Disputes Committee and the ORR.

6.5 The Registrar shall promptly inform the ORR and the Secretary of the Access Disputes Committee of any proposed or actual change in the identity of:

- (a) the person(s) able to exercise direct or indirect control over its affairs or the affairs of any company which is its holding company (where "holding company" has the meaning given in section 1159 of the Companies Act 2006); or
- (b) the individual or individuals within the Registrar who carry out the day to day functions and obligations of the Registrar under this Agreement.

(D) Change of Registrar

6.6 Any five CAHA Parties acting together may at any time propose in writing to the Secretary of the Access Disputes Committee that the Registrar should cease to be a party to this Agreement with effect from a specified date. The proposal shall include the name and address of a person it is proposed should assume the rights and obligations of a potential successor Registrar from such date and shall give the reasons, in reasonable detail, for the proposal to change the Registrar. The five CAHA Parties making the proposal shall promptly provide such further information relating to the proposal as the Secretary of the Access Disputes Committee may from time to time request.

6.7 The Secretary of the Access Disputes Committee shall send a copy of the proposal to all other CAHA Parties and to the ORR with a request that they submit any comments on the proposal by a specified date.

6.8 The proposal and any comments received on it shall be discussed by the Access Disputes Committee at a meeting to be held as soon as reasonably practicable after the date specified in its Secretary's request for comments.

6.9 If the proposal is approved (with such, if any, amendments as the Access Disputes Committee may determine):

- (a) the Secretary of the Access Disputes Committee shall notify all CAHA Parties and the ORR of its decision and shall give the current Registrar ("the Old Registrar") such notice as may be required in the circumstances of the date from which its appointment will cease and it will no longer be a party to the Agreement;
- (b) the CAHA Parties appoint the Secretary of the Access Disputes Committee as their agent to sign on their behalf an agreement with the person proposed to assume the rights and obligations of the Registrar (the "New Registrar") supplemental to this one and in substantially the form in Schedule 3;

- (c) Part II of Schedule 6 shall be amended so as to refer to the New Registrar; and
 - (d) the Old Registrar shall cease to be a party to this Agreement as of the date notified under (a) above but this shall not affect its liabilities and obligations in respect of the duties it was required to carry out under this Agreement prior to the date of withdrawal and it shall continue to be bound by Clauses 6.10 to 6.14 and 18 and paragraphs 20 and 21 of Schedule 2 after its withdrawal.
- 6.10 The Old Registrar shall as soon as reasonably practicable and in any event no later than the date specified for its replacement by the New Registrar deliver at its own cost in an orderly manner to the New Registrar all records and computer files within its control or possession (whether stored electronically or in hard copy) in connection with its duties under this Agreement, including (without limitation):
- (a) full details of claims or potential claims, the identity of claimants, any correspondence, documentation, service of proceedings received or other information in relation to this Agreement;
 - (b) full details of all CAHA Claim Handlers known to it;
 - (c) copies of the books and records it maintains pursuant to Schedule 2; and
 - (d) documentation made available to the Registrar pursuant to Clause 13.
- 6.11 The Old Registrar shall by the date specified for its replacement by the New Registrar transfer to or to the order of the New Registrar that amount of the charges it has levied on the CAHA Parties pursuant to paragraph 5 of Schedule 2 in the proportion that the total number of days as of the date of the New Registrar's appointment to the following 31 March bears to the total number of days in the financial year for which the charges were levied. The New Registrar, in the place of and to the exclusion of the Old Registrar, shall as of the date of its appointment be able to claim any charges that were due and outstanding from the relevant CAHA Parties (together with any applicable interest and VAT thereon) and shall promptly transfer to or to the order of the Old Registrar that amount of such charges recovered (together with any applicable interest and VAT thereon) in the proportion that the total number of days as of 1 April to the day before its appointment bears to the total number of days in the financial year for which the charges were levied.
- 6.12 The Old Registrar shall provide the New Registrar at the New Registrar's expense with its reasonable assistance and access to such additional material and information as the New Registrar may reasonably require for inspection, copying and the provision of information in connection with its duties under this Agreement. This access shall include reasonable access to premises, facilities, documentation, information (electronic or otherwise) and staff belonging to the Registrar which relate or have related to its duties under the Agreement.

- 6.13 The Old Registrar shall:
- (a) as of the date of notification under Clause 6.9(a), provide third parties from whom it receives after such date claims or any other correspondence in relation to its duties under this Agreement with details of the New Registrar and the date from which the New Registrar will take over the Registrar function; and
 - (b) after the date of the Old Registrar's withdrawal from this Agreement, forward promptly all claims and other documentation it receives in relation to this Agreement to the New Registrar.
- 6.14 The Access Disputes Committee may at any time and from time to time put the performance of the Registrar's function out to tender in accordance with such procedures as it may determine. If as a result the Access Disputes Committee proposes a change of Registrar Clauses 6.7 to 6.13 shall apply.
- 6.15 The Registrar may at any time resign its function and cease to be a party to this Agreement on giving the Secretary of the Access Disputes Committee not less than six months' notice in writing, whereupon Clause 6.14 shall apply.

(E) Supervision of Registrar

- 6.16 The Access Disputes Committee shall be authorised to oversee the performance by the Registrar of its functions and to take such steps in connection therewith as it considers to be in the best interest of the CAHA Parties.

7 Nuclear Claims

- 7.1 Any CAHA Party receiving a claim which it considers may actually or potentially be a Nuclear Claim, in whole or in part, shall promptly forward such claim to the Registrar.
- 7.2 Where the Registrar becomes aware of a claim, a potential claim, or circumstances likely to give rise to a claim which is likely to be wholly or partly a Nuclear Claim, Clause 9 shall have effect as amended by this Clause 7.
- 7.3 Any CAHA Party which was responsible for operating a train in circumstances relevant to the claim shall be deemed to be a Potentially Liable Party (whether or not it would be otherwise) and shall
- (a) promptly inform the Registrar of the names, addresses and contact details of the consignor and consignee of all (if any) Nuclear Matter carried on that train;
 - (b) use all reasonable efforts to ensure that the consignor and consignee attend any meeting convened under Clause 9.2.
- 7.4 The consignor and consignee shall be deemed to be Potentially Liable Parties for the purposes of Clauses 9.1 and 9.2 but not otherwise.

7.5 The Registrar

- (a) shall immediately contact the loss adjuster nominated under the Nuclear Industry Claims Protocol (the NLA) and shall (by means of a meeting under Clause 9.2 or otherwise) seek to reach an agreed decision with the NLA on whether the claim is, or is likely to be, wholly or partly a Nuclear Claim; and if it is so decided
- (b) shall forward all relevant information in its possession to the NLA; and
- (c) shall notify the claimant accordingly and explain whether any part of the claim will be handled by a CAHA Claim Handler

to the intent that any claim shall be handled by the NLA to the extent that it is a Nuclear Claim and by a person appointed in accordance with the provisions of this Agreement to the extent that it is not.

7.6 If the Registrar and the NLA are unable to reach agreement under Clause 7.5(a), or if any relevant party objects to the agreement they reach

- (a) the matter shall be referred to arbitration under the Arbitration Act 1996, provided that any relevant party may instead require it to be referred to the Technology and Construction Court or the Commercial Court of England and Wales;
- (b) the claim shall meanwhile be handled jointly by the NLA and a Lead Party appointed under Clause 9.2 on the basis that
 - (i) only one of them shall be entitled to deal with the claimant and the claimant should be advised to deal only with that person;
 - (ii) that person shall keep the other joint claims handler fully and promptly informed of the progress of the claim and shall obtain the consent of the other joint claims handler to the appointment of solicitors and any decision relating to a potential settlement of the claim.

7.7 For the purpose of Clause 7.6 a relevant party is any person who would be potentially liable for the claim under the Nuclear Installations Act 1965 if and to the extent that a claim proved to be a Nuclear Claim and any CAHA Party who would be potentially liable for the claim if and to the extent that it proved not to be a Nuclear Claim.

7.8 The CAHA Parties concerned in any event or circumstance giving rise to a Nuclear Claim shall co-operate with the Registrar in liaising with the NLA and the person handling the Nuclear Claim with a view to ensuring that all claims arising out of that event or circumstance are handled with due regard to the best interests of both the nuclear industry and the railway industry.

8 Claims below the Threshold

(A) Responsibility for handling the claim

8.1 Any claim in respect of which Final Liability is likely to be less than or equal to the Threshold, or in respect of which there is insufficient information to determine whether or not this is likely to be so, shall be handled by the CAHA Party which would have been liable for the claim under Clause 2.2 if it had resulted in a Final Liability which was below the Threshold.

(B) Liability for claims

8.2 Liability for any claim in respect of which the Final Liability is less than or equal to the Threshold shall be borne as allocated under Clauses 2.2 and 2.3.

(C) Procedure

8.3 On becoming aware, whether by receipt of a claim form or otherwise, of a potential claim falling within Clause 8.1, a CAHA Party, a person acting on its behalf or the Registrar (as the case may be) shall promptly notify the CAHA Party responsible under Clause 8.1 for handling the claim and shall provide that party with:

- (a) any claim form; and
- (b) copies of any statement taken from any individual possessing information, any report recording the inspection of property, and any other document (other than one which would be privileged, or in Scotland confidential, in legal proceedings between CAHA Parties),

which it may possess and is relevant to the claim.

8.4 If at any time the CAHA Claim Handler or a CAHA Party considers that a claim which it is handling in accordance with this Clause 8 is likely to result in a Final Liability of more than the Threshold it shall immediately inform the Registrar, and thereafter the claim shall be handled in accordance with the provisions of Clause 9.

(D) Disputes

8.5 If a CAHA Party which has been notified under Clause 8.3 considers that it is not responsible under Clause 8.1 for handling the claim it shall within seven days notify the Registrar accordingly and send to the Registrar any claim form which it has received in relation to the claim. Any subsequent dispute over which CAHA Party is to handle the claim shall be referred to the Allocation Chair. Any ruling by the Allocation Chair on such dispute shall be final and binding.

9 Claims over the Threshold

(A) Notification

- 9.1 On becoming aware of a claim, a potential claim or an event or circumstance likely to give rise to a claim, whether by receipt of a claim form or otherwise, in respect of which it believes the Final Liability is likely to be more than the Threshold or in respect of which Clause 2.5 deems the Final Liability to exceed the Threshold, the Registrar shall promptly provide details of the claim, event or circumstance to the Potentially Liable Parties, and shall within seven days of receipt of the claim form send a copy of it to them.

If any Potentially Liable Party considers that any other CAHA Party may be liable in whole or in part for the claim (or might have been were it not for the Regulation) it shall forthwith notify the Registrar and the Registrar shall forthwith serve a notice under this Clause 9.1 on such CAHA Party whereupon such CAHA Party shall thenceforth be treated as a Potentially Liable Party for the purposes of this clause.

The details provided by the Registrar under this Clause 9.1 shall specify whether or not the Registrar believes that a Major Incident has occurred.

(B) Management

- 9.2 The Registrar shall convene a meeting of the Potentially Liable Parties, and such insurers and advisers (not exceeding two per party) as each may invite to attend, on a date within 14 days of the Registrar obtaining sufficient details of the claim, unless:
- (a) the Potentially Liable Parties have already agreed which of them are liable for the claim and in what proportions, or
 - (b) they can so agree without a meeting, or
 - (c) circumstances such as an accident inquiry render it appropriate to delay the meeting, in which case it shall take place at the earliest appropriate date.

The Potentially Liable Parties shall make all reasonable attempts to agree which of them are liable for the claim and in what proportions and all documents supplied and statements made for that purpose or for the purpose of selecting a Lead Party shall be treated as 'without prejudice' communications as between CAHA Parties and covered by litigation privilege:

- 9.2.1 if unanimous agreement is reached, the CAHA Party which it is agreed shall bear the largest share of the liability, or its insurers on its behalf, shall be responsible for the management and the conduct of the claim (the "Lead Party");
- 9.2.2 if such an agreement is not reached, the Potentially Liable Parties may unanimously select the Lead Party on a without prejudice basis;
- 9.2.3 if a Lead Party is not selected on either of the above bases within 14 days of the Potentially Liable Parties being first provided with details pursuant to Clause 9.1, the Lead Party shall be decided where appropriate by applying the same rules as are used

for allocating liability for claims under the Threshold and are set out in Clause 2.2. If those rules would result in there being two or more Lead Parties the CAHA Parties concerned shall agree which is to be the Lead Party or that no more than two of them shall be joint Lead Parties. If joint Lead Parties are appointed, only one Lead Party shall be entitled to deal with the claimant and the claimant shall be advised to deal only with such Lead Party;

9.2.4 if the application of these rules does not enable a Lead Party to be identified or leads to a result which any of the Potentially Liable Parties considers unreasonable, that Party shall be entitled to refer the matter to the Registrar for a decision;

9.2.5 subject to Clause 9.2.4, any Potentially Liable Party may at any time during the course of the claim propose a change of Lead Party and, if unanimous agreement of all the Potentially Liable Parties is not reached within 14 days of the change being formally proposed, may refer the matter to the Allocation Chair for a decision;

9.2.6 a CAHA Party may within seven days of receiving notification of a claim under Clause 9.1 by notice to the Registrar irrevocably accept that, if the claim is proved, it and no other CAHA Party is liable for it. In such a case it shall handle the claim and the remainder of this Clause 9 shall not apply to the claim; and

9.2.7 once the Lead Party has been appointed, it shall be solely responsible for the management and conduct of the claim and litigation. If joint Lead Parties are appointed under Clause 9.2.3, both shall be responsible for the handling of the claim but only one shall be entitled to deal with the claimant and the claimant shall be advised to deal only with such Lead Party.

9.3

9.3.1 The Potentially Liable Parties shall make all reasonable efforts to agree whether or not a Major Incident has occurred. If no agreement is reached, any of the Potentially Liable Parties shall be entitled to refer the matter to the Registrar for a decision. Where such a referral is made:

(a) all Potentially Liable Parties shall make written submissions to the Registrar within 14 days of the reference; and

(b) the Registrar shall consider the submissions received and make a decision without a hearing within 28 days of receipt of the referral.

9.3.2 Pending resolution of a referral under Clause 9.3.1 to the Registrar, the Potentially Liable Parties agree to comply with the terms of this Agreement as if it had been decided that no Major Incident had occurred and accordingly, the provisions of Clause 9.6 shall apply.

9.3.3 Notwithstanding any prior agreement or determination pursuant to this Clause 9.3 that no Major Incident has arisen, if at any time the amount of aggregate Outgoings incurred by the Lead Party exceeds ██████████ or the amount of aggregate Outgoings incurred in any calendar year by the Lead Party exceeds ██████████, then a Major Incident shall be deemed to have occurred.

- 9.4 Claims resulting from the same event or circumstance shall be managed by the same Lead Party, unless
- (a) the Potentially Liable Parties agree unanimously that different categories of claims should be handled by different Lead Parties,
 - (b) a CAHA Party wishes to manage claims falling within its employer's liability insurance, or
 - (c) the Registrar in the exercise of its discretion decides that any claim or claims arising from the same event or circumstance will be managed by one or more different Lead Parties.
- 9.5 Whether or not the claim has been brought against it, the Lead Party shall manage the conduct of the claim, but:
- 9.5.1 it shall report regularly to the other Potentially Liable Parties, and shall consult regularly with them, as to the progress of the claim. It shall make a proposal to the other Potentially Liable Parties as to the form and frequency of such reports and consultation and, where those parties' insurers are involved, the extent to which their insurers' agreement is needed to particular steps in the defence of the claim. The Lead Party shall comply with any reasonable requests for changes to its proposal from other Potentially Liable Parties. To the extent it is able, it shall comply with any requests from other Potentially Liable Parties for information regarding the claim;
 - 9.5.2 it shall notify the other Potentially Liable Parties of the firm of solicitors it proposes to instruct to defend the claim, and of any subsequent change of firm. If any Potentially Liable Party reasonably objects (or, where its insurer is involved, its insurer objects) to the identity of the firm, the Lead Party shall instruct a firm which is acceptable to all Potentially Liable Parties;
 - 9.5.3 it shall not compromise the claim without the consent of the other Potentially Liable Parties. Such consent shall not be unreasonably withheld or delayed;
 - 9.5.4 interim payments, payments into court and tenders shall be governed by:
 - (a) if no Major Incident has occurred, the provisions of Clause 12 below; or
 - (b) if a Major Incident has occurred, the provisions of Clause 9.7 below;
 - 9.5.5 in conducting and managing the claim (including without limitation forming any opinion, exercising any discretion or making any determination), the Lead Party:
 - (a) shall aim to achieve the best settlement reasonably possible in the interests of all the Potentially Liable Parties which reflects the strength of the claim and the costs likely to be incurred in defending it. If necessary it shall defend any court proceedings brought by the claimant until it can achieve a settlement meeting these criteria. If it cannot, it shall contest such proceedings to judgment or decree and shall bring any appeal which counsel instructed in the matter advises to be worth bringing in the light of the chances of success and the amounts at stake;

- (b) shall at all times act in good faith and in a reasonable manner as regards any other Potentially Liable Parties; and
 - (c) shall not present the facts in a manner which advances its own interests at the cost of those of other Potentially Liable Parties, other than in pursuance of the aim set out at (a) above; and
- 9.5.6 the Lead Party shall not ask the court to allocate liability as between Potentially Liable Parties.
- 9.6 Unless and until it is established under Clause 9.3 that a Major Incident has occurred:
- 9.6.1 the Lead Party shall be responsible for paying all Outgoings without prejudice to its ability to recover a reasonable proportion of all expenses and disbursements incurred in defence of the claim from the Potentially Liable Parties pursuant to Clause 9.6.2;
 - 9.6.2 during the course of a claim, the Lead Party shall be entitled to recover from the Potentially Liable Parties a reasonable proportion of any reasonable expenses incurred and any reasonable disbursements made by it in defending the claim, including any such costs properly incurred on behalf of Potentially Liable Parties before its formal appointment as Lead Party. Such expenses may include in-house legal costs but not the cost of management time or general overheads. The Lead Party shall invoice each Potentially Liable Party for such expenses and disbursements in such proportions as shall be considered reasonable in the circumstances. Each Potentially Liable Party shall pay the Lead Party the amount invoiced within 42 days of receiving such invoice, or such other time as may be agreed;
 - 9.6.3 the Lead Party shall account to the relevant CAHA Parties in respect of the net amount of any costs recovered by it as a result of successfully defending a claim within 42 days of such costs being recovered. Clause 10.1 shall apply to the amounts payable under this sub-clause as it applies to amounts invoiced by the Lead Party; and
 - 9.6.4 in the event of a claim being successfully defended, the Lead Party shall be entitled to follow the procedure set out in Clause 9.18 in respect of the recovery of legal fees and other disbursements.

(C) Major Incidents

- 9.7 If and when it is established under Clause 9.3 that a Major Incident has occurred the following provisions shall apply:
- 9.7.1 the Lead Party shall pay all Outgoings;
 - 9.7.2 the Lead Party may make payments of compensation, damages or agreed settlement amounts, interim or final payments, payments into court or (in Scotland) tenders in respect of Relevant Claims;
 - 9.7.3 all Potentially Liable Parties shall contribute to Outgoings properly incurred by the Lead Party (less any Outgoings of which a due proportion has already been recovered under Clause 9.6.2) in proportions agreed by them or in default of agreement in equal proportions;

- 9.7.4 the Lead Party may from time to time, but no more frequently than monthly, require payment by other Potentially Liable Parties of contributions by delivering an invoice for them. Each invoice shall contain reasonable detail of the Outgoings concerned and all relevant calculations;
- 9.7.5 all invoices delivered under this clause shall be paid by the Potentially Liable Party concerned within 28 days of receipt;
- 9.7.6 in the event of a claim being successfully defended:
- (a) the Lead Party shall use reasonable endeavours to maximise recovery from relevant claimants of Outgoings expended by it in connection with that claim;
 - (b) the Lead Party shall account to each Potentially Liable Party in respect of the net amount of any costs recovered by it as a result of successfully defending a claim within 28 days of such costs being recovered ("the due date"), pro rata to the contributions to aggregate Outgoings made by that Party. Any amount paid late shall attract interest at the Prescribed Rate from the day following the due date until the date of receipt; and
 - (c) any shortfall of recovery of Outgoings shall be borne by the Potentially Liable Parties in proportions agreed by them or, if not agreed, in equal proportions;
- 9.7.7 the Lead Party and the other Potentially Liable Parties shall, at least every six months or at any time if requested by a Potentially Liable Party, review whether all Potentially Liable Parties remain potentially liable. Potentially Liable Parties may from time to time all agree to release a Potentially Liable Party (a) unconditionally, or (b) on such terms as may be agreed. If it is agreed by all Potentially Liable Parties that a Potentially Liable Party should no longer be considered to be such then, subject to any terms agreed to the contrary:
- (a) it shall be refunded all contributions to Outgoings previously made by it together with interest at the Prescribed Rate from the date on which each contribution was made to the date of the refund. Refunds shall be made by each of the remaining Potentially Liable Parties in the proportions in which they will thereafter be liable to contribute to Outgoings; and
 - (b) it shall cease to be a Potentially Liable Party and, for all other purposes of this agreement, it shall be treated as if it had never been a Potentially Liable Party;
- 9.7.8 if:
- (a) a Potentially Liable Party requests a review under Clause 9.7.7 on the grounds that there is no reasonable likelihood that it will be determined that it will have any Final Liability in respect of a claim; but
 - (b) it is not agreed that it should cease to be a Potentially Liable Party; and
 - (c) it is later agreed under Clause 9.7.7 that it should no longer be considered to be a Potentially Liable Party or it is later determined that it has no Final Liability in respect of that claim and that other CAHA Parties do,

then:

- (x) the other Potentially Liable Parties shall repay to that Potentially Liable Party all its contributions to Outgoings in the proportions specified in Clause 9.7.7(a) or as the case may be, in proportion to their respective shares of the Final Liability;
- (y) repayments of contributions made by that Potentially Liable Party after it first requested a review shall be made with interest at the Prescribed Rate plus five per cent from the date on which that contribution was made until the date of repayment; and
- (z) repayments of all other contributions made by that Potentially Liable Party shall be made with interest at the Prescribed Rate and otherwise calculated as aforesaid;

9.7.9 if a CAHA Party becomes liable to pay interest to a Potentially Liable Party under Clause 9.7.8(y), the Allocation Chair, arbitrator or court shall determine whether a request made for a review under Clause 9.7.7 was reasonable, and may substitute for the date the Potentially Liable Party first requested a review the date on which it considers it became reasonable, having regard to the information available to the Potentially Liable Parties, for that party to have ceased to be a Potentially Liable Party; and

9.7.10 the liability of Potentially Liable Parties to make refunds under Clauses 9.7.7 and 9.7.8 shall be joint and several.

9.7.11 the provisions in Parts (D) and (E) of this clause for the allocation of liability for claims and for the issue of invoices and payments apply to claims in respect of Major Incidents as they apply to other claims save that, where Potentially Liable Parties have contributed to Outgoings, Clause 9.17 applies.

(D) Allocation

9.8 When liability for a claim has been finally determined, by whatever means, the Lead Party shall immediately notify the Registrar of the terms upon which it has been determined. If the claim results in a liability on CAHA Parties (including in respect of the costs of defending the claim), the Registrar shall promptly inform all Potentially Liable Parties who shall make all reasonable efforts to agree an allocation of the liability. Meanwhile the Registrar shall make all reasonable efforts to arrange a meeting of all the Potentially Liable Parties to take place within 28 days of the claim resolution, failing which the Registrar shall convene a meeting of those Potentially Liable Parties able to attend within 42 days of the claim resolution (unless the Potentially Liable Parties have by then agreed an allocation of the liability). At any such meeting each Potentially Liable Party may be accompanied by up to two insurers or advisers.

9.9 At such meeting, the Registrar and the Potentially Liable Parties attending shall use all reasonable endeavours to agree an allocation of liability as between the Potentially Liable Parties in writing and any such agreed allocation shall be promptly notified to any Potentially Liable Parties who did not attend the meeting. If within 14 days of such notification any Potentially Liable Party who did not attend notifies the Registrar that it objects to the allocation, the matter shall be treated as not agreed.

- 9.10 If an allocation of liability is not agreed then:
- 9.10.1 the matter shall be referred to mediation under Clause 22;
- 9.10.2 if the mediation does not result in an allocation of liability being agreed, the mediator shall declare in writing that it has failed. Any of the Potentially Liable Parties which was a party to the mediation may, by notice in writing served on the Registrar and each of the other Potentially Liable Parties within 28 days of the mediator's declaration, require that the issue be decided either (a) by an arbitrator under the Arbitration Act 1996, or (b), if the Final Liability is or is likely to be over [REDACTED], by Her Majesty's High Court of Justice in England or, where the relevant claim has been brought in a Scottish Court, by the Court of Session in Edinburgh. If on the expiry of the said period of 28 days no such notice has been served, the allocation proposed by the Registrar shall stand and the Potentially Liable Parties shall be deemed to have agreed to it. Any notice served within the said 28 day period which requires the issue to be decided in the High Court or the Court of Session shall prevail over any notice requiring it to be decided by arbitration. The party serving it shall use all reasonable endeavours to ensure that court proceedings are progressed rapidly.
- 9.11 Where an allocation of liability is required to be decided by an arbitrator or the court pursuant to Clause 9.10, it shall be irrebuttably presumed for the purposes of such decision that the amount paid to the claimant was due and that the claim resulted from negligence on the part of one or more CAHA Parties. In so allocating liability the arbitrator or court, as appropriate, shall be bound by any findings of fact made by the court which heard the proceedings brought by the claimant. But it or he shall not be bound by any findings of such court as to which CAHA Party or Parties were liable to the claimant or as to the allocation of liability between CAHA Parties.
- (E) Invoices and Payment
- 9.12 The Lead Party shall
- (a) promptly pay the amount (if any) of the Final Liability in accordance with the terms on which the claim was settled or was determined by a court or arbitrator; and
- (b) endeavour to secure payment terms that allow time for an allocations of liability to be agreed before payment falls due.
- 9.13 Subject to Clause 9.17, the Lead Party shall invoice the other Potentially Liable Parties with shares of the Final Liability. It shall tell them the date by which it needs to be in funds to meet the Final Liability and they shall pay the invoices accordingly.
- 9.14 The amounts invoiced under Clause 9.13 shall be
- (a) in accordance with an allocation of liability agreed and not later objected to under Clause 9.9; failing which
- (b) in shares provisionally agreed by the Potentially Liable Parties on a without prejudice basis; failing which
- (c) in equal shares accepted on a without prejudice basis.

- 9.15 Subject to Clause 9.17, the Lead Party shall be entitled to issue invoices to the other Potentially Liable Parties for their share of any costs incurred in relations to a claim to the extent not recovered from the claimant. Such costs shall include legal fees (including in-house legal costs) and other costs, expenses and disbursements incurred in defending the claim, but not the cost of management time or general overheads. The amount invoiced to each party shall be calculated in accordance with Clause 9.14 and shall take account of any amounts reimbursed by that party under Clause 9.6.2.
- 9.16 Where invoices have been issued and paid under either or both of Clauses 9.13 and 9.15 in shares arrived at under Clause 9.14 (b) or (c) and a different allocation of the Final Liability is later agreed or is determined by a court or arbitrator, the Lead Party shall issue a schedule of adjusting payments to be made by and between the Potentially Liable Parties to give effect to that determination and such payments shall be made notwithstanding that there is to be an appeal or rehearing. If an appeal or rehearing results in a different allocation again the process shall be repeated.
- 9.17 Clauses 9.13 and 9.15 shall not apply to claims arising out of a Major Incident if some or all of the Potentially Liable Parties have contributed to Outgoings in accordance with Clause 9.7. Instead, upon the allocation of the Final Liability being agreed or being determined by a court or arbitrator, the Lead Party shall issue a schedule of such payments to be made by and between the Potentially Liable Parties as shall result in:
- (a) those Potentially Liable Parties whose aggregate contributions to Outgoings have exceeded their share of the Final Liability being repaid an amount equal to the excess together with interest at the Prescribed Rate (or the Prescribed Rate plus five per cent as may be applicable pursuant to Clause 9.7.8) from the date on which the contributions were made to the date of repayment (with the amounts repaid being identified with contributions made later in priority to those made earlier);
 - (b) the amounts required to fund the repayments under sub-paragraph (a) being provided by those Potentially Liable Parties whose aggregate contributions to Outgoings have fallen short of their shares of the Final Liability pro rata to that shortfall but so that they shall nevertheless be jointly and severally liable to make the repayments due;

and in this sub-clause the Final Liability shall be taken to include the Lead party's unrecoverable costs, expenses and disbursements.

Payments under this clause shall be made whether or not the allocation of the Final Liability is to be the subject of an appeal or rehearing (but without prejudice to any adjustments which may become necessary as a result) and shall be made under such arrangements proposed by the Lead Party as may be convenient and equitable.

(F) General

- 9.18 Where there is any dispute as to the reasonableness of any proposal made pursuant to Clause 9.5.1 any CAHA Party may refer the dispute to the Allocation Chair for determination.

- 9.19 Where there is any dispute as to the reasonableness of:
- (a) any objection to the identity of any firm of solicitors pursuant to Clause 9.5.2; or
 - (b) the withholding of any consent to the compromise of any claim pursuant to Clause 9.5.3,
- any CAHA Party may apply to the Allocation Chair for a decision which shall be final and binding on the parties.
- (G) The Regulation
- 9.20 Article 58 of Annex 1 of the Regulation shall not relieve a CAHA Party of any potential liability as a Potentially Liable Party through any failure of a claimant to notify that CAHA Party of its claim.
- 9.21 Article 62 of Annex 1 of the Regulation shall not apply as between the CAHA Parties.

10 Payment by CAHA Parties

- 10.1 Each CAHA Party shall within 28 days, or such other period as may be specified in this Agreement, of receipt (“the due date”) pay any invoice issued by a Lead Party or other CAHA Claim Handler whether or not it intends to dispute its liability for, or the amount of, the invoice. Any amount paid late shall attract interest at the Prescribed Rate from the day following the due date until the date of receipt. A CAHA Party may not rely on any set-off or counterclaim to reduce its liability to pay any invoice.
- 10.2 If a CAHA Party fails to pay by the due date the full amount due under an invoice issued to it pursuant to this Agreement, the CAHA Claim Handler shall:
- 10.2.1 immediately serve a formal demand for payment on the defaulting CAHA Party, which it shall copy to the ORR; and
 - 10.2.2 pay to the claimant (or where appropriate the CAHA Party to which the amount is owed) the amount owing to it.

11 Claims impacting on the Catastrophe Cover

If a claim seems likely to impact upon the Lead Party's third party liability cover over [REDACTED] Clause 9 shall apply, save that the insurer(s) of the Lead Party's catastrophe layer(s) may lead the conduct of the claim jointly with the Lead Party.

12 Interim Payments, Payments into Court, Tenders and Advance Payments

- 12.1 Payments made immediately after an accident to those injured shall be handled in a manner consistent with the Code of Practice.
- 12.2 Other interim payments to a claimant or payments into court or (in Scotland) tenders in respect of a claim may be made at any time by:
- (a) where a claim is being handled under Clause 9, the Potentially Liable Parties by agreement among them or, failing such agreement, the Lead Party as agent for the Potentially Liable Parties; or
 - (b) where a claim is being handled under Clause 8, the CAHA Claim Handler.
- 12.3 If an Advance Payment is made by a CAHA Party and the Final Liability in respect of the Relevant Claim is less than or equal to the Threshold, then the CAHA Party which paid the Advance Payment shall be reimbursed by the CAHA Party (if different) which is liable for the claim under Clause 2.2.
- 12.4 If an Advance Payment is made by a CAHA Party and the Final Liability in respect of the Relevant Claim is more than the Threshold then:
- (a) the CAHA Party which made the Advance Payment shall be a Potentially Liable Party unless released by the other Potentially Liable Parties at its request in accordance with Clause 9.7.7;
 - (b) the CAHA Party which made the Advance Payment shall be reimbursed by the Lead Party, which shall treat the amount as a cost of handling the Relevant Claim to be apportioned among the Potentially Liable Parties in accordance with Clause 9.6.2 or 9.7.3 (as the case may be); and
 - (c) where the Advance Payment has been reimbursed by the Lead Party under Clause 12.4(b) and the Relevant Claim has been successfully defended, then the Lead Party shall treat the amount of the Advance Payment as a cost of handling the Relevant Claim to be apportioned equally among the Potentially Liable Parties in accordance with Clause 9.6.4 or Clause 9.7.6(c) (as the case may be).
- 12.5 If an Advance Payment is returned under Article 13 (3) of the Regulation, the amount so returned shall be reimbursed to the CAHA Party which made the Advance Payment or, if the CAHA Party which made that Advance Payment has been reimbursed pursuant to Clause 12.3, to the CAHA Party which made that reimbursement or, if that Advance Payment has been apportioned among the Potentially Liable Parties under Clauses 12.4(b) or (c), to those Potentially Liable Parties in the same proportions as the liability to contribute to the Advance Payment was apportioned to them.

13 Provision of Information

13.1 A CAHA Party shall if so requested by the CAHA Claim Handler (for the purpose of handling a claim) or the Registrar (for the purpose of discharging its duties under this Agreement) make available to the CAHA Claim Handler or the Registrar (as the case may be):

- (a) any relevant documents (other than those which would be privileged from production in legal proceedings or, if proceedings are brought in Scotland, which would be confidential),
- (b) any individual whom the CAHA Claim Handler or the Registrar (as the case may be) reasonably believes may be able to provide relevant information, and
- (c) any relevant property for inspection,

in each case in relation to a specified claim. The CAHA Party shall instruct any individual thus made available to provide all relevant information (other than any which is privileged or confidential as aforesaid) to the CAHA Claim Handler or the Registrar (as the case may be).

13.2 This clause applies where

- (a) in conducting a claim pursuant to Clause 9, a Lead Party has obtained relevant documents or information from any other CAHA Party, and
- (b) arbitration or court proceedings are subsequently instituted to decide how liability for the claim should be allocated.

Where such proceedings are instituted, any CAHA Party which is a Potentially Liable Party in relation to that claim shall be entitled to inspect and obtain copies of

- (i) any statement taken from any individual possessing information, any report recording the inspection of property, and
- (ii) any other document (other than one which would be privileged from production or, in Scotland, confidential, in legal proceedings between the CAHA Claim Handler or the Lead Party (as the case may be) and other Potentially Liable Parties),

which is relevant to that claim, which the CAHA Claim Handler or the Lead Party (as the case may be) possessed when the claim arose or obtained in the course of defending the claim, on payment of the CAHA Claim Handler's or the Lead Party's reasonable copying charges (and any applicable VAT thereon). Such inspection and copying facility shall be afforded upon reasonable notice and within normal business hours.

14 Court Proceedings

- 14.1 If a claimant indicates his intention of issuing court proceedings in the near future in respect of his claim, the CAHA Claim Handler shall inform the Registrar of the claimant's intentions and the Registrar shall inform the claimant of the identities and addresses of the Potentially Liable Parties.
- 14.2 If a claimant issues proceedings against some, but not all, of the Potentially Liable Parties, or against other CAHA Parties who are not Potentially Liable Parties, the CAHA Claim Handler shall invite the claimant to issue proceedings against the Potentially Liable Parties against whom he has not issued proceedings. The CAHA Claim Handler shall explain to the claimant its expectation that one entity will represent all the Potentially Liable Parties in the proceedings.
- 14.3 Where the claimant has established that he has suffered loss caused by the fault of one or more CAHA Parties, the CAHA Claim Handler shall not argue that the claimant has failed to identify which CAHA Parties were at fault or caused his loss.
- 14.4 For the purpose of providing the information described in Clause 14.1 or 14.2, the CAHA Claim Handler may require any CAHA Party to specify the CAHA Parties which it considers to be the Potentially Liable Parties in relation to a claim. The CAHA Party shall comply as soon as reasonably practicable. As long as it has acted in good faith, it shall not be liable to the CAHA Claim Handler or to other CAHA Parties for any errors in the list of names so specified.
- 14.5 For the avoidance of doubt, in this clause "CAHA Party" includes any Independent Contractor treated as a CAHA Party by virtue of Clause 15.2.

15 Independent contractors

- 15.1 Where a CAHA Party ("the Employer"), in connection with the maintenance or operation of its railway assets, contracts with an Independent Contractor, it shall if reasonably possible include in the contract a provision in the following, or substantially the following, terms:

"(1) This clause applies where a claim, which arises out of or is connected with this agreement, is made by a third party who does not have a contract with [the contractor],

- against [the Employer] or the Registrar which may result in a claim being made against [the contractor], or
- against [the contractor] which may result in a claim being made against [the Employer] or the Registrar (whether by the contractor or otherwise).

(2) [The contractor] irrevocably appoints [the Employer] as its agent (in consultation where necessary with railway industry parties and their insurers) to defend or agree to arrangements for defence of the claim in accordance with the railway industry Claims Allocation and Handling Agreement. In relation to such a claim [the contractor] shall be bound by the terms of that Agreement as if it were a party to it.

(3) Where such a claim results in a payment to the third party, [the contractor] agrees that liability for such payment and the costs of handling and defending the claim shall be allocated in accordance with the railway industry Claims Allocation and Handling Agreement. In the event of any dispute, it agrees to participate in the procedure set out in Clause 22.

(4) PROVIDED THAT paragraphs (2) and (3) above shall not apply to any claim in respect of which [the contractor] admits that it is liable and that no railway industry party is liable. In such a case [the contractor] itself may defend the claim.”

15.2 Where an Independent Contractor is potentially liable for a claim such as is described in Clause 15.1(1) and its contract with the Employer includes a clause in substantially the terms set out in Clause 15.1, in relation to that claim the Independent Contractor shall be treated as a CAHA Party for the purposes of this Agreement. It may be the Lead Party and may participate in mediation and in the arbitration proceedings dealing with allocation of liability for the claim. Its share of any liability shall be determined in accordance with the provisions of this Agreement and the terms of its contract with the Employer (which terms shall as between Employer and Independent Contractor take precedence over this Agreement). If the claim is for less than the Threshold and the CAHA Claim Handler is aware that the Employer may be entitled to an indemnity in respect of that claim from the Independent Contractor, the CAHA Claim Handler shall give the Employer and the Independent Contractor a reasonable opportunity to arrange payment by the Independent Contractor direct to the claimant, before itself making payment to the claimant on behalf of the Employer.

15.3 Where

- (a) an Independent Contractor is potentially liable for a claim such as is described in Clause 15.1(1); and
- (b) its contract with the Employer does not include a clause in substantially the terms set out in Clause 15.1 (or an agreement in substantially those terms covering the claim has not otherwise been reached),

then the following rules shall apply:

15.3.1 where the Independent Contractor falls into one of the following categories-

- cleaner
- decorator
- maintenance contractor
- supplier of small parts or regularly-used materials

or is a contractor which supplies goods or services to the Employer more frequently than once every six months, then:

- (a) where the claimant does not claim against the Independent Contractor, the Employer shall be treated for the purposes of this Agreement as responsible for the acts of the Independent Contractor. When allocating liability among CAHA Parties, any proportion of the liability allocated to the Independent Contractor shall be invoiced to and paid by the Employer. The Employer may then recover from the Independent Contractor by whatever means it thinks fit;

- (b) where the claimant claims against the Independent Contractor (whether or not he also claims against the Employer) the Employer shall endeavour to reach an agreement with the Independent Contractor in terms similar to those set out in Clause 15.1. If it is unable to do so, it shall discuss with the Lead Party by, or on behalf of which the claim is being handled, the appropriate course to follow. They may agree:
 - (i) that the Employer shall, as between CAHA Parties, accept liability for the claim and shall defend it on behalf of itself and any other CAHA Parties named in the proceedings; or
 - (ii) that the Potentially Liable Parties shall be separately represented. If the claimant claims against any CAHA Party, that CAHA Party shall join the Potentially Liable Parties as third parties to that claim.

15.3.2 in all other cases (for example where the Independent Contractor is a rolling stock manufacturer), the CAHA Party shall endeavour to reach an agreement with the Independent Contractor in terms similar to those set out in Clause 15.1. If it is unable to do so, it shall discuss with the Lead Party by, or on behalf of which the claim is being handled, the appropriate course to follow. They may agree:

- (a) that the Employer shall, as between CAHA Parties, accept liability for the claim and shall defend it on behalf of itself and any other CAHA Parties named in the proceedings; or
- (b) that the Potentially Liable Parties shall be separately represented. If the claimant claims against any CAHA Party, that CAHA Party shall join the Potentially Liable Parties as third parties to that claim.

15.4 The provisions of Clauses 15.1 to 15.3 above shall apply to a lessor of rolling stock, and a CAHA Party's contract with it, in the same way as they apply to an Independent Contractor falling within the description in Clause 15.3.2.

15.5 Where a claim arising out of or in connection with this Agreement is made by a third party in relation to any international rail service, such claim shall be handled by the relevant CAHA Party in accordance with the provisions of this Agreement provided that such CAHA Party utilises capacity through the Channel Tunnel held by the "Railways" as defined in Recital B of the Eurotunnel Usage Contract dated 29 July 1987.

16 Claims in respect of Damage to Property

A CAHA Party may recover its loss in respect of damage to its property resulting from a single event or circumstance occurring after 1 May 2004 and for which one or more CAHA Parties would be liable at law, subject to the following conditions:

- (a) it may recover such loss only if it exceeds ██████████ (in which event the CAHA Party shall be entitled to recover the whole amount of the loss and not just the excess), provided that:

- (i) only loss which would otherwise be recoverable under this clause (which, for the avoidance of doubt, does not include any claims by a third party) may be taken into account in deciding whether the loss exceeds [REDACTED]; and
 - (ii) the threshold of [REDACTED] shall be reviewed after one year and thereafter as part of any review carried out by the Access Disputes Committee in accordance with the provisions of Clause 19.2. If the Access Disputes Committee decides that the threshold should be changed, it may propose an amendment to that effect under Clause 19.1 as though it were a CAHA Party;
- (b) it may then recover such loss, provided that:
- (i) the total of the aggregate net amounts payable by all CAHA Parties in respect of all losses arising out of that event or circumstance shall not exceed the Cap (as defined below);
 - (ii) for the purposes of paragraph (i), the aggregate net amount payable by each CAHA Party shall be the aggregate gross amount so payable reduced (but not below nil) by any amounts receivable by it from other CAHA Parties in respect of the same event or circumstance;
 - (iii) if the event or circumstance has resulted in damage to the property of two or more CAHA Parties, and their combined loss exceeds the Cap, the capped amount they receive shall be apportioned between them as may be just and equitable;
 - (iv) the "Cap" shall be [REDACTED] (adjusted by the RPI Percentage on an annual basis, with the first adjustment being made with effect from 1 April 2011 and thereafter with effect from each anniversary of that date during the term of this Agreement (in each case, a "Review Date")); and
 - (v) this provision shall apply to liability for damage to property howsoever caused (including, without limitation, damage caused by negligence); and
- (c) the terms of Clauses 17 and 22.

Provided that the provisions of this clause:

- (i) are subject to the terms of any contract between the parties concerned, and
- (ii) shall not apply to any claim which does not arise out of the operation of railway assets.

17 Exclusion of Claims for Consequential Loss

No CAHA Party may recover from any other CAHA Party either for any loss of revenue (including fare revenue, subsidy, access charges and incentive payments) or loss of goodwill or possible business or for indirect or consequential loss caused to it by that or any other CAHA Party in connection with railway operations, save to the extent expressly permitted by this or any other agreement between them.

18 Confidentiality and Data Protection

18.1 The Registrar agrees with each CAHA Party and each CAHA Party agrees with each other CAHA Party that it will keep confidential all claims and all information relating to claims falling within the provisions of this Agreement. No party hereto shall disclose details of such claims to third parties except:

- (a) if otherwise agreed by all CAHA Parties which are liable or potentially liable for the claim concerned;
- (b) to its own or the Registrar's advisors, insurers or bankers;
- (c) if compelled by law or requested to do so by the ORR or a taxation authority;
- (d) to a mediator, arbitrator or court in connection with proceedings provided for in the Agreement;
- (e) for the purpose of claiming from a non-CAHA Party contribution or indemnity in respect of its own liability for the claim; or
- (f) if it is in the public domain.

18.2 The Registrar agrees with each CAHA Party and each CAHA Party agrees with each other CAHA Party that it will process personal data relating to claims pursuant to the provisions of this Agreement in compliance with its obligations under the General Data Protection Regulation and Data Protection Act 2018 as amended from time to time.

19 Amendment

19.1 This Agreement may be amended in accordance with the following procedure.

19.1.1 Any CAHA Party proposing an amendment shall send its proposal, and the reasons for it, to the Registrar, which may itself originate a proposal for amendment;

19.1.2 the Registrar shall send a copy of the proposal, supported by the reasons for it, to all CAHA Parties and to the ORR with a request that they submit any comments on the proposal by a date specified in the request;

19.1.3 the Registrar shall prepare a summary of the comments received and send it, with its recommendation to the Secretary of the Access Disputes Committee;

- 19.1.4 the Access Disputes Committee, advised by the Registrar, shall consider the proposal and forward its recommendation to the ORR;
- 19.1.5 if the ORR approves the amendment, the Secretary of the Access Disputes Committee shall forward the terms of the approval to the Registrar, which will notify all CAHA Parties of the amendment and of the date from which it will take effect;
- 19.1.6 if the ORR disapproves the recommended amendment, it shall be of no effect.
- 19.2 The Access Disputes Committee or the Registrar may at any time commission a report by the Registrar or by an independent person on the operation of all or part of CAHA. All CAHA Parties shall be asked for their views, which will be taken into account in preparing the report. The report shall make proposals for any amendments to the terms of CAHA that might improve its operation. Any such proposals for amendment shall be considered and acted upon by the Access Disputes Committee in accordance with this Clause 19.1.4 and the following sub-clauses as though they had been proposed by a CAHA Party and the requirements of the previous sub-clauses had been satisfied.
- 19.3 Notwithstanding the foregoing, the Access Disputes Committee may at any time determine that this Agreement and any agreements supplemental to it should be consolidated into a "Consolidated Agreement" and its Secretary is hereby authorised to sign such Consolidated Agreement on behalf of the parties at the time hereto. The Secretary of the Access Disputes Committee shall:
- (a) obtain a certificate from a partner of a firm of solicitors which shall be addressed solely to the Secretary of the Access Disputes Committee, and on which solely the Secretary of the Access Disputes Committee may rely, that the Consolidated Agreement does not alter the provisions of this Agreement and agreements supplemental to it that were previously in force, and shall be entitled to rely on such certificate in signing the Consolidated Agreement;
 - (b) in the event that any CAHA Party proposes an amendment to the Consolidated Agreement, the sole purpose and effect of which is declared to be to correct an inconsistency between the provisions of the Consolidated Agreement and this Agreement and any agreements supplemental to it that were in force, the Access Disputes Committee shall satisfy itself that that will be its sole effect and, if so satisfied, shall approve the proposal; and
 - (c) provide a copy of the Consolidated Agreement to all parties.

The Consolidated Agreement shall apply in substitution for the provisions of this Agreement and agreements supplemental to it, which shall cease to have any further effect, notwithstanding any changes which may subsequently be found to have been inadvertently made in the process of consolidation.

20 Addition and Withdrawal of CAHA Parties

- 20.1 The CAHA Parties appoint the Registrar as their agent to sign on their behalf an agreement with any person who is in the future authorised to be the operator of a railway asset or who becomes a CAHA Party in accordance with Clause 20.3. The

agreement shall be supplemental to this one and in substantially the same form as that attached at Schedule 5. Under it, such person shall agree to be bound by the terms of this Agreement as if it were an original signatory of it.

20.2 A CAHA Party shall cease to be a party to this Agreement either:

- (a) in the case of a CAHA Party authorised to be the operator of a railway asset, when it ceases to be so authorised but not otherwise; or
- (b) in the case of any other person who becomes a CAHA Party, on the date specified in a written notice provided by such person to the Registrar stating it is withdrawing from this Agreement.

A CAHA Party's withdrawal from the Agreement shall not affect its obligations under this Agreement in respect of claims arising out of events or circumstances prior to the date of its withdrawal.

20.3 Any person who is not authorised to be the operator of railway assets may (acting in good faith) request to become a CAHA Party in accordance with the following procedure:

20.3.1 the request shall be made in writing to the Registrar with an explanation, in reasonable detail, of why the person considers that his becoming a CAHA Party would be in the interests of the CAHA Parties in the effective operation of CAHA;

20.3.2 the Registrar shall send a copy of such request to all other CAHA Parties and the ORR with a request that they submit any objections to such request by a specified date;

20.3.3 any objection to the request by any CAHA Party or the ORR by the date specified in Clause 20.3.2 shall be referred to the Access Disputes Committee for a decision which shall be final; and

20.3.4 if no objection has been received by the date specified in Clause 20.3.2, or no objection has been upheld by the Access Disputes Committee, the request shall be discussed by the Access Disputes Committee at its next available meeting. The request shall be approved if supported by 75 per cent of the Access Disputes members present and voting.

20.4 This Agreement may be terminated in accordance with the procedure set out in Clause 19.1, *mutatis mutandis*.

21 Notices

All communications of a formal nature (including notices) in connection with this Agreement shall be in writing and shall be sent by facsimile or electronic mail wherever possible or delivered by hand or recorded delivery or sent by pre-paid first class post to the party on whom the notice is to be served at the relevant address notified in accordance with Schedule 2 or at its last known address. For this purpose, each CAHA Party shall ensure that the Registrar has up-to-date details of its address, its facsimile number, its electronic mail address and the name of the person for whose attention any notice under this Agreement should be sent.

Any such notice or other communication shall be deemed to have been received by the party to whom it is addressed as follows:

- (a) if sent by hand or recorded delivery, when so delivered;
- (b) if sent by pre-paid first class post, from and to any place within the United Kingdom, three days after posting unless otherwise proven;
- (c) if sent by facsimile, subject to confirmation of uninterrupted transmission by a transmission report, upon sending (where such transmission occurs before 17.00 hours on the day of transmission) and in any other case on the day following the day of transmission; and
- (d) if sent by electronic mail, upon confirmation of receipt by the party to whom it is addressed to the sender either by return electronic mail, an automatically generated return electronic mail confirming the electronic mail has been delivered successfully or other form of written response.

22 Disputes

- 22.1 Any dispute arising out of or in connection with this Agreement shall, save in relation to those which this Agreement expressly provides to be resolved by arbitration or the courts, unless previously resolved, be dealt with by mediation in the first instance.
- 22.2 A party wishing to address a dispute through mediation shall so inform the Registrar and every other party to the dispute and shall take the lead in seeking to agree the identity of a mediator with each of the other parties. If the parties are unable to agree a mediator within ten days the Registrar shall appoint one from its Register of Mediators. If one or more of the parties objects within five days to the mediator so appointed the attempt to establish mediation shall be deemed to have failed, and the dispute shall be resolved by arbitration in accordance with the Arbitration Act 1996.

23 Governing Law

This Agreement shall be governed by and construed in accordance with the laws of England and Wales.

24 General provisions

- 24.1 Each of the CAHA Parties and the Registrar agrees to be bound indefinitely by the provisions contained in this Agreement in relation to matters relevant to a period when it was a CAHA Party (or, as the case may be, was the Registrar), and that the limitation on the right of recovery under section 10 of the Limitation Act 1980 shall not apply as between CAHA Parties under any circumstances.
- 24.2 Each of the provisions of this Agreement is intended to apply to the maximum extent permitted by law. The provisions of this Agreement are modified if and only to the extent required by any mandatory provision of applicable law.

25. Code of Practice

Each CAHA Party acknowledges and agrees that it is an “Industry Party” for the purposes of the Code of Practice and each CAHA Party shall comply with the provisions of the Code of Practice.

I hereby certify that this agreement has been duly entered into in accordance with Clause 19.1 and comes into effect on the date of this Agreement.

In accordance with Clause 19.3, this Agreement shall apply in substitution for the Claims Allocation and Handling Agreement dated 1 April 1994, as amended by side letter dated 23 February 1996 and Supplemental Agreements dated 29 August 1996, 30 August 1997, 1 April 1998, 1 April 2004 (First), 1 April 2004 (Second), 1 December 2009, 1 April 2011 and 1 November 2015 which shall cease to have any further effect from the date of this Agreement.

Dated 21 February 2019

.....
Secretary of the Access Disputes Committee

SCHEDULE 1
Allocation of Liability

The allocations of liability contained in this Schedule relate solely to the operation of the Claims Allocation and Handling Agreement and do not imply any acceptance of legal liability to any third party.

<u>Type</u>	<u>Responsible Party</u>
1. Damage to property or personal injury on stations except where allocated elsewhere in this Schedule	The CAHA Party in legal occupation of that part of the station on which the damage or injury occurred
2. Damage to property including vehicles or personal injury in station and other car parks	The CAHA Party in legal occupation of the station or other car park
3. Damage to property or personal injury in ascending or descending from a train	The CAHA Party under whose licence or European licence and GB statement of national regulatory provisions the train was operated
4. Damage to property or personal injury occasioned by assault by staff employed by a CAHA Party	The employing CAHA Party
5. Damage to property or personal injury which occurs on a train however caused but with the exception of vandalism	The CAHA Party under whose licence or European licence and GB statement of national regulatory provisions the train was operated
6. Damage to property or personal injury arising from a person falling from a train door when the train is in motion	The CAHA Party under whose licence or European licence and GB statement of national regulatory provisions the train was operated
7. Damage to property or personal injury by electrocution caused by all overhead line and third rail power supply equipment where the person injured is not a trespasser	The infrastructure manager except where the injured person fell from a station platform in which case the responsible party shall be the CAHA Party in legal occupation of the platform
8. Damage to property or personal injury caused when a person on a station is struck by a train door	The CAHA Party under whose licence or European licence and GB statement of national regulatory provisions the train was operated
9. Damage to property or personal injury at a level crossing	The infrastructure manager or CAHA Party in legal occupation of the level crossing if different

	<u>Type</u>	<u>Responsible Party</u>
10.	Personal injury to trespassers occurring on a station including the track between station platforms	The CAHA Party in legal occupation of that part of the station
11.	Personal injury to trespassers apart from on station premises	The CAHA Party in legal occupation
12.	Damage to property or personal injury caused by the spread of fire from CAHA Parties' premises	The CAHA Party in legal occupation of the premises in which the fire commenced
13.	Damage to property or personal injury caused by flooding other than within station premises	The CAHA Party in legal occupation of the flooded area or, if there is no such party, the infrastructure controller
14.	Damage to property or personal injury caused by flooding within station premises	The CAHA Party in legal occupation
15.	Theft of accompanied property on a train	The CAHA Party under whose licence or European licence and GB statement of national regulatory provisions the train was operated
16.	Theft of accompanied property at a station	The CAHA Party in legal occupation of that part of the station premises in which the theft took place
17.	Theft or damage to unaccompanied goods	The CAHA Party which sold the ticket pursuant to which the property was carried
18.	Property damage due to rabbit infestation	The CAHA Party in legal occupation of the property from which the rabbits originated
19.	Damage caused by road closures	The infrastructure manager or CAHA Party in legal occupation of that part of the road if different
20.	Damage to property or personal injury caused by weedkilling, but not by the operation of weedkilling spray trains	The CAHA Party in legal occupation of the premises on which the weedkilling was being carried out
21.	Damage to property or personal injury caused by the operation of weedkilling spray trains	The infrastructure manager or CAHA Party operating the weedkilling spray trains if different

	<u>Type</u>	<u>Responsible Party</u>
22.	Damage to property or personal injury caused by subsidence, the failure of embankments, cutting slopes and lineside structures	The relevant infrastructure manager
23.	Damage to property or personal injury caused by tree felling except in station or other car parks	The infrastructure manager or CAHA Party in legal occupation of the area in which the damage occurred if different
24.	Damage to property or personal injury caused by tree felling in station and other car parks	The CAHA Party in legal occupation of the station or other car park
25.	Damage caused by encroachment of tree roots	The CAHA Party in legal occupation of the location of the tree
26.	Damage to property or personal injury caused by vandalism except where the act committed by the vandal took place on a train	The CAHA Party in legal occupation of the place where the act committed by the vandal took place
27.	Damage to property or personal injury caused by vandalism where the act committed by the vandal took place on or from a train	The CAHA Party under whose licence or European licence and GB statement of national regulatory provisions the train was operated
28.	Damage to property or personal injury caused by noise or vibration	The infrastructure manager or CAHA Party in legal occupation of the area in which the damage occurred if different
29.	Damage to property or personal injury caused by fumes, brake dust, electrical interference, the escape of the contents of railway wagons, or other pollution arising from the operating of railway vehicles	The CAHA Party under whose licence or European licence and GB statement of national regulatory provisions the train was operated
30.	Damage to property or personal injury on a train caused by terrorism	The CAHA Party under whose licence or European licence and GB statement of national regulatory provisions the train was operated
31.	Damage to property or personal injury caused by terrorism	The CAHA Party in legal occupation of the premises in which the damage occurred

<u>Type</u>	<u>Responsible Party</u>
32. Damage to property or personal injury of a nature not specified elsewhere in this Schedule 1 from a cause arising on railway premises	The CAHA Party in legal occupation of the property or, if there is no such party, the relevant infrastructure manager. Note: it is not intended that this allocation of liability be used pursuant to Clause 9.2.3 to identify the Lead Party in connection with a derailment or collision
33. Discrimination arising from an alleged breach of the Equality Act 2010 (or any subordinate legislation)	(i) the CAHA Party under whose licence or European Licence and GB statement of national regulatory provisions the train was operated, or (ii) (in all other cases) the CAHA Party in legal occupation of the premises where the breach is alleged to have occurred

- Note:
1. For the treatment of claims of a type shown above, refer to Clause 2.2(c).
 2. References to the CAHA Party in legal occupation include situations where the CAHA Party has leased its occupied premises or part of them to a non-CAHA Party.
 3. References to the infrastructure manager will usually mean Network Rail.

SCHEDULE 2

General Obligations of the Registrar

Service standards

1. The Registrar shall perform the services it provides to, or on behalf of, the CAHA Parties under this Agreement using reasonable care and skill and in a timely manner and in accordance with all statutory and regulatory requirements.
2. The Registrar shall ensure that it provides and maintains as necessary all equipment, telephone lines and staff reasonably required to provide all and any of its services under this Agreement.
3. If the Registrar commits a material breach of this Agreement it shall notify the Secretary of the Access Disputes Committee promptly of the material breach and the proposed steps to be taken to remedy such material breach. Without prejudice to Clause 6(D) of this Agreement, the Registrar shall take all such steps as are necessary to remedy such material breach as soon as possible and promptly report to the Secretary of the Access Disputes Committee of such steps as are taken. The Secretary of the Access Disputes Committee may forward copies of such notices and correspondence to the CAHA Parties and the ORR, as the Access Disputes Committee considers appropriate.

Books, records and charges

4. The Registrar shall maintain books and records which enable its charges and expenses to be ascertained. The Registrar shall also maintain a list of the CAHA Parties from time to time together with the details provided to it by each CAHA Party under Clause 21, which the Registrar shall make available to any CAHA Party on request.
5. The Registrar shall estimate its costs and expenses for the 12 months from each 1 April, and shall obtain the written approval of the Access Disputes Committee thereto. Each CAHA Party shall pay to the Registrar its apportioned share of the amounts so estimated (the "charge") within 28 days of receiving an invoice from the Registrar rendered not more than 28 days prior to the start of the relevant financial year. London Underground Limited, together with each CAHA Party which has not been required to contribute to the railway safety levy pursuant to the Railway Safety Levy Regulations 2006 for the preceding year, shall each have apportioned to it such amount of the charge as the Registrar shall determine to be fair and reasonable. The remainder of the charge shall be apportioned amongst each of the remaining CAHA Parties pro rata to the amount payable by it to the aggregate railway safety levy for all such CAHA Parties for the preceding year as determined in accordance with the Railway Safety Levy Regulations 2006. A person who becomes a party to this Agreement shall not be invoiced under this clause for the financial year then current; and a CAHA Party which ceases to be a party to this Agreement shall not be entitled to any refund of any amount previously paid by it under this paragraph.

All such charges are exclusive of any VAT that may be payable thereon unless they are expressly stated in the invoice to be inclusive of VAT.

6. If and to the extent that the actual costs and expenses of the Registrar for any financial year exceed or fall short of the amount estimated the difference shall be carried over to the following financial year so as to increase or reduce the total amount to be apportioned for that financial year.
7. In preparing its annual accounts, the Registrar shall obtain a certificate from its auditors as to the amount of the costs and expenses incurred by the Registrar and properly recoverable through the charge. The Registrar shall provide a copy of this certificate to the Secretary of the Access Disputes Committee and, on request, to any CAHA Party.

Administrative services

8. The Registrar shall maintain and update database(s) of:
 - (a) claims received and correspondence and any other documentation received by it in connection with such claims; and
 - (b) CAHA Claim Handlers appointed by the CAHA Parties.
9. The Registrar shall provide to CAHA Parties details of its address and telephone number and shall provide reasonable prior notification of any change.
10. The Registrar shall ensure that its telephone lines are manned between 09.00 and 17.00 Monday to Friday excluding bank holidays. Telephone calls shall be answered, and if necessary returned, promptly.
11. The Registrar shall acknowledge all written communications from members of the public and CAHA Parties within three working days of receipt by the Registrar. The first such acknowledgement or response regarding any matter shall include the name of the person to be contacted in the event of any problem with the service provided.
12. The Registrar shall assign to each claim a reference number, which it shall quote in all correspondence, reports and invoices.
13. On receipt or notification of an intended claim by a member of the public the Registrar shall within three working days send to him a claim form to be completed and returned, together with details of the appropriate return address.
14. It is the intention of the CAHA Parties that they are data controllers and the Registrar is a data processor when processing personal data in order to give effect to this Agreement
15. The personal data the Registrar may process include names, addresses, dates of birth and health information belonging to individuals who make claims for compensation against CAHA Parties. This information is processed in order to allocate and handle claims in accordance with the terms of this Agreement.
16. The Registrar agrees not to process any personal data other than what is necessary to comply with the written provisions of this Agreement. For the avoidance of doubt it does not transfer any personal data outside the EEA.

17. Any subcontract between the Registrar and another as authorised in writing under clause 6.4 of this Agreement will contain the provisions of clauses 14 to 22 of this Schedule 1 *mutatis mutandis*.
18. Any person the Registrar employs or otherwise authorises (subject to compliance with clause 6.4 of this Agreement) to process personal data will owe a contractual duty of confidentiality in relation to that data.
19. The Registrar will implement appropriate technical and organisational measures to:-
 - (a) ensure a level of security appropriate to any risk to the rights and freedoms of data subjects in accordance with Article 32 of the General Data Protection Regulation;
 - (b) assist CAHA Parties in so far as possible to respond to data subject requests taking into account the nature of the processing it carries out.
20. Taking into account the nature of the processing and the information available to it the Registrar will assist CAHA Parties to:
 - (a) comply with their own security requirements under Article 32;
 - (b) notify any personal data breach to the Information Commissioner;
 - (c) communicate any personal data breach to data subjects;
 - (d) carry out any data protection impact assessment; and
 - (e) consult with the Information Commissioner following any such assessment.
21. Within seven days of becoming aware of a personal data breach or of any involvement with or intervention by the Information Commissioner, the Registrar will notify the Secretary of the Access Disputes Committee on behalf of the CAHA Parties.
22. The Registrar will make available to the Secretary of the Access Disputes Committee all information necessary to demonstrate compliance with Article 28 of the General Data Protection Regulation. It will allow and contribute to audits and permit inspections carried out on behalf of the Access Disputes Committee or auditors on its behalf.

Co-ordination Services

23. The Registrar shall arrange appropriate meeting rooms, facilities and documentation for such meetings as are required to be held between the Potentially Liable Parties under this Agreement.
24. The Registrar shall co-ordinate and provide such information as it holds in connection with this Agreement to each CAHA Party as is required for the relevant CAHA Party to fulfil its obligations under this Agreement.

Review

25. The Access Disputes Committee may commission an independent review of the Registrar's performance of its obligations on its own initiative or at the request of any CAHA Party. The Registrar shall make available all relevant files and provide all

information reasonably required for that purpose. The person carrying out the review shall make a written report to the Access Disputes Committee, which shall provide a copy to each CAHA Party.

26. A CAHA Party dissatisfied with the conduct of the CAHA Registrar in relation to a specific matter may submit a complaint to the Secretary of the Access Disputes Committee (without prejudice to any other rights of that CAHA Party provided for within this Agreement). The Access Disputes Committee shall investigate such complaint and take such action as it considers appropriate and proportionate.

Intellectual Property

27. Subject and without prejudice to Clause 5.4 and paragraph 19 below, the Registrar shall retain ownership of all Intellectual Property Rights in and relating to all methods, formulae, techniques, processes, systems, materials, programs and documentation devised, designed or prepared by or on behalf of the Registrar in connection with its obligations under this Agreement and all other Intellectual Property Rights created by or on behalf of the Registrar in connection with this Agreement.
28. Any CAHA Party supplying data, documentation and other materials to the Registrar in connection with this Agreement shall retain ownership of all Intellectual Property Rights in such data, documentation and other materials.

Document Retention

29. The Registrar shall hold and retain records and documents relating to this Agreement until the earlier of (i) six years after the termination of this Agreement and (ii) the transfer of such records and documents to a replacement Registrar in accordance with the terms of this Agreement.
30. The Registrar shall be liable for any loss whatsoever incurred by a CAHA Party and/or the ORR caused by the failure of the Registrar to hold and retain such records and documents, including (without limitation) where such records and documents have not been retained in hard copy and the failure to hold such records and documents relate to a failure or breakdown of any electronic system on which such records or documents are held for any reason whatsoever.

SCHEDULE 3

Supplemental Agreement admitting a New Registrar to the Claims Allocation and Handling Agreement

This Agreement is made on [date] between:

[the New Registrar]

("the New Registrar")

and

the CAHA Parties

WHEREAS:

- (1) This Agreement is supplemental to the Claims Allocation and Handling Agreement consolidated as at 1 March 2019 (the "Consolidated Agreement"), as subsequently amended.
- (2) By Clause 6.9(b) of the Consolidated Agreement all those CAHA Parties who are party to the Consolidated Agreement as at the date hereof have appointed the Secretary of the Access Disputes Committee as their agent with power to sign this Agreement on their behalf.

NOW IT IS HEREBY AGREED AS FOLLOWS:

in accordance with Clause 6.9(b) of the Consolidated Agreement, as from [date] the New Registrar shall have all the rights and shall be subject to all the obligations set out in the Consolidated Agreement as if on the date hereof it had signed the Consolidated Agreement (including any amendments).

IN WITNESS WHEREOF this Agreement has been duly executed on the date first above mentioned.

Signed by
(the Secretary of the Access Disputes Committee)
on behalf of the CAHA Parties

Signed by
on behalf of
[the New Registrar]

SCHEDULE 4
Code of Practice for the handling of claims made by
the public against the railway industry

INTRODUCTION

1. The Code of Practice appears in three parts:
 - Part A: Background
 - Part B: Conduct towards claimants
 - Part C: Obligations of Industry Parties to each other.
2. Part A applies to the complete Code of Practice. Industry Parties may include all or some of the content of Part A, or may draw on Part A, when responding to specific matters raised by claimants or others.

Part B sets certain minimum standards to be met by all Industry Parties and their claims handlers. It is envisaged that each Industry Party may adopt its own Statement of Practice for the handling of claims. This must comply with the standards set by the Code, but may adopt higher standards and may include contact details and other relevant information. Each Industry Party should supply members of the public, on request, with a copy of any such Statement of Practice and, if separately requested, a copy of Parts A and B of the Code of Practice.

Part C deals with rights and obligations as between Industry Parties, and is a document confidential to Industry Parties.

PART A: BACKGROUND

1. Those companies holding a licence (under the Railways Act 1993) or a European licence and/or a Statement of National Regulatory Provisions (under the Railway (Licensing of Railway Undertakings) Regulations 2005) issued by the ORR to operate railway assets (“Industry Parties”) are required by the terms of that licence or statement to have in place arrangements approved by the ORR for the handling of claims against them.
2. This Code of Practice has been approved by the ORR. Industry Parties have adopted its provisions and undertake to meet the standards specified in it.
3. The Code is subject to review by the Access Disputes Committee at the request of an Industry Party or at its own initiative. The Access Disputes Committee will seek representations from Industry Parties and their insurers and the ORR, and will also take account of any unsolicited comments that it may have received or of which it has been made aware.

Any amendments proposed by the Access Disputes Committee will be subject to approval by the ORR.

4. Each Industry Party will have its own practice and procedures for handling complaints. The Code is intended to apply only to claims, including any part of a more general complaint which, either at the time it is made or subsequently, is treated as a claim.

Hereafter the term “complaint” refers only to a complaint about the way in which a claim against an Industry Party was handled.

5. The claims to which the Code applies are those which:
 - are brought against any Industry Party; and
 - arise in connection with the operation of railway assets or on land owned or controlled by an Industry Party which is or has been used in connection with the operation of railway assets; and
 - are not claims which arise out of, or are connected with, a contract between the claimant and an Industry Party, other than a contract for the parking of a motor vehicle, or for the carriage of persons, motor vehicles or personal belongings by rail; and
 - are not claims by a passenger (or consignor of unaccompanied personal belongings) for delay or the consequences of delay; and
 - are not claims, or a part of any claim, which (if found to be valid) would fall within the compensation provisions of the Nuclear Installations Act 1965.

6. The objectives of the Code are to ensure that all claims against the railway industry to which it applies -
- can be made without the claimant having to spend time and money identifying the Industry Party against which a claim should be made; and
 - are dealt with efficiently and responsibly,
- and that any proposed settlement is fair and reasonable.
7. Nothing in the Code shall affect the obligation of Industry Parties to comply with the Civil Procedure Rules or such other statutory requirements as may apply.
8. Each of the principles set out in the Code is to be complied with in accordance with the spirit of its intentions and so as to include, but not be limited or restricted by reference to, any specific requirement made under it.
9. Any reference to a claimant includes any person acting on his behalf.
10. The Code applies to the Registrar as it applies to Industry Parties, with due alteration of details. The functions of the Registrar are currently carried out by:

CAHA Registrar Limited
8th Floor
1 Eversholt Street
London NW1 2DN

Telephone/Facsimile: 01908 543627
E-mail: enq@caharegistrar.co.uk

Any queries or comments regarding the content of this Code of Practice should be addressed to the Registrar.

PART B: CONDUCT TOWARDS CLAIMANTS

Principle 1: The procedure for making claims should be straightforward

- (i) Each Industry Party will ensure that telephone contact allowing a claim to be originated is normally available on weekdays between 09.30 and 16.00.
- (ii) A written notification of a claim will be acknowledged in writing within five working days of receipt by the relevant claims handling office. The acknowledgement will quote a reference number and point of contact.
- (iii) The Registrar is authorised to accept service of claims against any Industry Party or the Registrar. Any claim so made will be treated as having been duly made against the relevant Industry Party.
- (iv) Provided that the claim is made against the Registrar or an Industry Party, a claimant will not be disadvantaged through failing to identify the appropriate Industry Party and the claim will be treated as having been made against the appropriate Industry Party.
- (v) A claimant who wishes to start court proceedings will, on request, be advised by the claims handling office dealing with the claim of the names and addresses of all potentially liable Industry Parties. The claims handling office will use reasonable endeavours to ensure that the list of names and addresses supplied is accurate and complete.

Principle 2: Claims will be handled efficiently and responsibly

- (i) Industry Parties and those handling claims on their behalf will ensure that claims are handled by persons who have appropriate skills and training and access to facilities necessary to enable them to comply with this Code of Practice.
- (ii) In certain circumstances one Industry Party may be nominated to handle, through its claims handling office, all claims arising out of an incident for which more than one Industry Party may be liable. This nomination does not imply any particular liability on the part of the Industry Party in question.
- (iii) All claims handling offices will quote a reference number on all correspondence and other documents.
- (iv) Telephone calls from claimants will normally be returned by the end of the next working day.

- (v) A written reply to each written communication from a claimant will normally be sent within 28 days of receipt or such shorter timescale as laid down in the Civil Procedure Rules. If a substantive written reply can not be given within that period the person dealing with the claim will give a written explanation and indicate when such a reply can be expected.

Principle 3: Claims will be handled courteously and without taking advantage of any lack of knowledge or of financial or other resources on the part of the claimant

- (i) All communications with a claimant will be couched in courteous terms.
- (ii) There will be no discrimination against a claimant on grounds of race, colour, creed, nationality, age, disability, gender or sexual orientation.
- (iii) The information requested of a claimant will be no more than appears to be reasonably necessary to enable the validity of the claim and the amount of any settlement to be properly assessed. Where appropriate, an explanation will be given to the claimant as to why the information is needed.

Principle 4: Where compensation is agreed, the amount paid will be fair and reasonable and will be paid without avoidable delay

- (i) In cases where compensation is found to be due, the amount paid will be fair and reasonable. It will be paid promptly and in full, subject to compliance with any relevant legislation such as that which applies to compensation for injuries giving rise to Social Security benefits.
- (ii) Where an Industry Party makes an ex gratia payment this will be stated to be without acceptance of liability and should not be seen as setting a precedent.

PART C: OBLIGATIONS OF INDUSTRY PARTIES TO EACH OTHER

Principle 1: Industry Parties will, when handling claims, have due regard to the interests of other Industry Parties that are or may be affected

- (i) Each Industry Party will take reasonable steps to ensure that any person handling claims on its behalf complies with this Code of Practice and current legislation.
- (ii) Any Industry Party receiving documents relating to a claim which should be against another Industry Party will promptly forward the documents to the Registrar or to another Industry Party which has agreed that it is responsible for handling the claim and advise the sender accordingly.
- (iii) Any Industry Party handling a claim below or equal to the Threshold (as defined in Clause 3.2 of CAHA) will act with due consideration for the interests of any other Industry Party likely to be affected by the outcome.
- (iv) Any Industry Party which has responded to a request from a claimant to provide the names and addresses of all potentially liable Industry Parties will promptly notify those Industry Parties whose names and addresses have been supplied.
- (v) Any Industry Party designated as Lead Party for a claim above the Threshold will handle the claim with due consideration for the interests of all Potentially Liable Parties. Potentially Liable Parties in respect of an incident likely to give rise to a significant number of claims will agree with the Lead Party appropriate authority to settle claims or classes of claim without further reference to the Potentially Liable Parties.
- (vi) After an incident which is likely to give rise to a significant number of claims an Industry Party which may be involved in handling the resulting claims will make a general announcement giving the address to which such claims should be sent and will send copies of the announcement to the Registrar and to Industry Parties involved in the incident. As between Industry Parties, the making of such an announcement will not constitute admission of any liability on the part of any Industry Party.
- (vii) Without prejudice to any obligation to make an Advance Payment, Industry Parties will give consideration to making ex gratia and/or interim compensation payments in cases where there are grounds for considering that the reputation of the railway industry as a whole would be protected or enhanced by such payments being made, having regard in particular to the immediate needs of those affected by the incident. An Industry Party making an ex gratia payment will do so on a without prejudice basis and without acceptance of liability and must stipulate that the payment shall not be seen as setting a precedent.
- (viii) Industry Parties will make every effort to attend or be represented at any intra-industry meeting, of which reasonable (and except immediately following a Major Incident or other emergency, at least 14 days) notice has been given.

- (ix) Any Industry Party may at its own expense review the handling of claims in which it has an interest, but which are being handled by or on behalf of another Industry Party (in the case of claims below or equal to the Threshold) or a Lead Party (in the case of claims above the Threshold). In so doing it will cause as little disturbance to the operation of the office handling the claims as may be practicable in the circumstances. The person handling the claims will make available all relevant records and provide any information reasonably required for this purpose without charge apart from reasonable photocopying charges.
- (x) Any Industry Party which receives a claim which may fall within the scope of the Nuclear Installations Act 1965 will promptly notify the Registrar and forward to it copies of all relevant (including original) documentation received in relation to the claim.

Principle 2: Industry Parties will monitor their compliance with the Code

- (i) Each person handling a claim will be required to refer to his superior any complaint of a failure to comply with the terms of this Code of Practice. Each Industry Party will monitor that all such complaints are duly and promptly referred.
- (ii) Each Industry Party will keep a record of all complaints received from claimants alleging a failure to comply with the terms of this Code of Practice. Each Industry Party using a separate claims handling office to handle claims on its behalf will ensure that such a record is also maintained by that office.
- (iii) Such records will be retained for a minimum of three years and will be available for inspection by the ORR or by a person acting on his behalf.

Principle 3: Each Industry Party has an obligation to other Industry Parties to comply with the Code

- (i) An Industry Party has an obligation to provide to another Industry Party information within its possession or power, excluding confidential information and information covered by legal or professional privilege, requested by the latter Party to enable it to comply with the Code and/or the Civil Procedure Rules. Such information should be provided within 21 days of receiving the written request.
- (ii) An Industry Party which considers that its interests have been prejudiced, or the reputation of the railway industry as a whole has been harmed, by the failure of another Industry Party, or of any person acting for it, to comply with this Code of Practice, may serve a written notice on that other Industry Party specifying the failure and declaring that there is a dispute between them by reason of it. If not resolved between the parties, any such dispute will be referred to the Allocation Chair for determination. A copy of the Allocation Chair's determination will be supplied by the Allocation Chair to the ORR.

SCHEDULE 5

Supplemental Agreement admitting a New Party to the Claims Allocation and Handling Agreement

This Agreement is made on [date] between:

[the New Party]

("the New Party")

and

["the Registrar"]

("the Registrar").

WHEREAS:

- (1) This Agreement is supplemental to the Claims Allocation and Handling Agreement consolidated as at 1 March 2019 (the "Consolidated Agreement"), as subsequently amended.
- (2) By Clause 20.1 of the Consolidated Agreement all those CAHA Parties who are party to the Consolidated Agreement as at the date hereof have appointed the Registrar as their agent with power to sign this Agreement on their behalf.

NOW IT IS HEREBY AGREED AS FOLLOWS:

in accordance with Clause 20.1 of the Consolidated Agreement, as from the date hereof the New Party shall have all the rights and shall be subject to all the obligations set out in the Consolidated Agreement as if on the date hereof it had signed the Consolidated Agreement (including any amendments).

IN WITNESS WHEREOF this Agreement has been duly executed on the date first above mentioned.

Signed by
on behalf of **The Registrar**

Signed by
on behalf of **[the New Party]**

SCHEDULE 6

Parties to the Claims Allocation and Handling Agreement as at 1 March 2019
(Note: a current list of parties is available on request
from the Registrar)

PART I : AUTHORISED CAHA PARTIES

1. Abellio East Anglia Limited
2. Abellio ScotRail Limited
3. Alstom Transport UK Limited
4. Arriva Rail London Limited
5. Arriva Rail North Limited
6. Babcock Rail Limited
7. Balfour Beatty Rail Infrastructure Services Limited
8. Balfour Beatty Rail Plant Limited
9. Bombardier Transportation UK Limited
10. The Chiltern Railway Company Limited
11. Colas Rail (U.K.) Limited
12. DB Cargo International Limited
13. DB Cargo (UK) Limited
14. Devon and Cornwall Railways Limited
15. Direct Rail Services Limited
16. East Midlands Trains Limited
17. Eurostar International Limited
18. First Greater Western Limited
19. First MTR South Western Trains Limited
20. First Transpennine Express Limited
21. Freightliner Limited
22. Freightliner Heavy Haul Limited
23. GB Railfreight Limited
24. Glasgow Prestwick International Airport Limited
25. Govia Thameslink Railway Limited
26. Grand Central Railway Company Limited
27. Great Central Railway (Nottingham) Limited
28. Harsco Rail Limited
29. Heathrow Express Operating Company Limited
30. Hitachi Rail Europe Limited
31. Hull Trains Company Limited
32. JSD Research and Development Limited
33. Keolis Amey Operations/Gweithrediadau Keolis Amey Ltd
34. Locomotive Services (TOC) Limited
35. London North Eastern Railway Limited

36. London and North Western Railway Company Limited
37. London and South Eastern Railway Limited
38. London Underground Limited
39. Loram Limited
40. Merseyrail Electrics 2002 Limited
41. MITIE Technical Facilities Management Limited
42. MTR Corporation (Crossrail) Limited
43. Network Rail Infrastructure Limited
44. North Yorkshire Moors Railway Enterprises Plc
45. Pre Metro Operations Limited
46. Rail Express Systems Limited
47. Rail Operations (UK) Limited
48. RTS Rail Transport Services GmbH
49. Serco Caledonian Sleepers Limited
50. South Yorkshire Supertram Limited
51. Stobart Rail Limited
52. Trenitalia c2c Limited
53. Tyne and Wear Passenger Transport Executive
54. Victa Railfreight Limited
55. Vintage Trains Limited
56. VolkerRail Limited
57. West Coast Railway Company Limited
58. West Coast Traincare Limited
59. West Coast Trains Limited
60. West Midlands Trains Ltd
61. XC Trains Limited

PART II : THE REGISTRAR

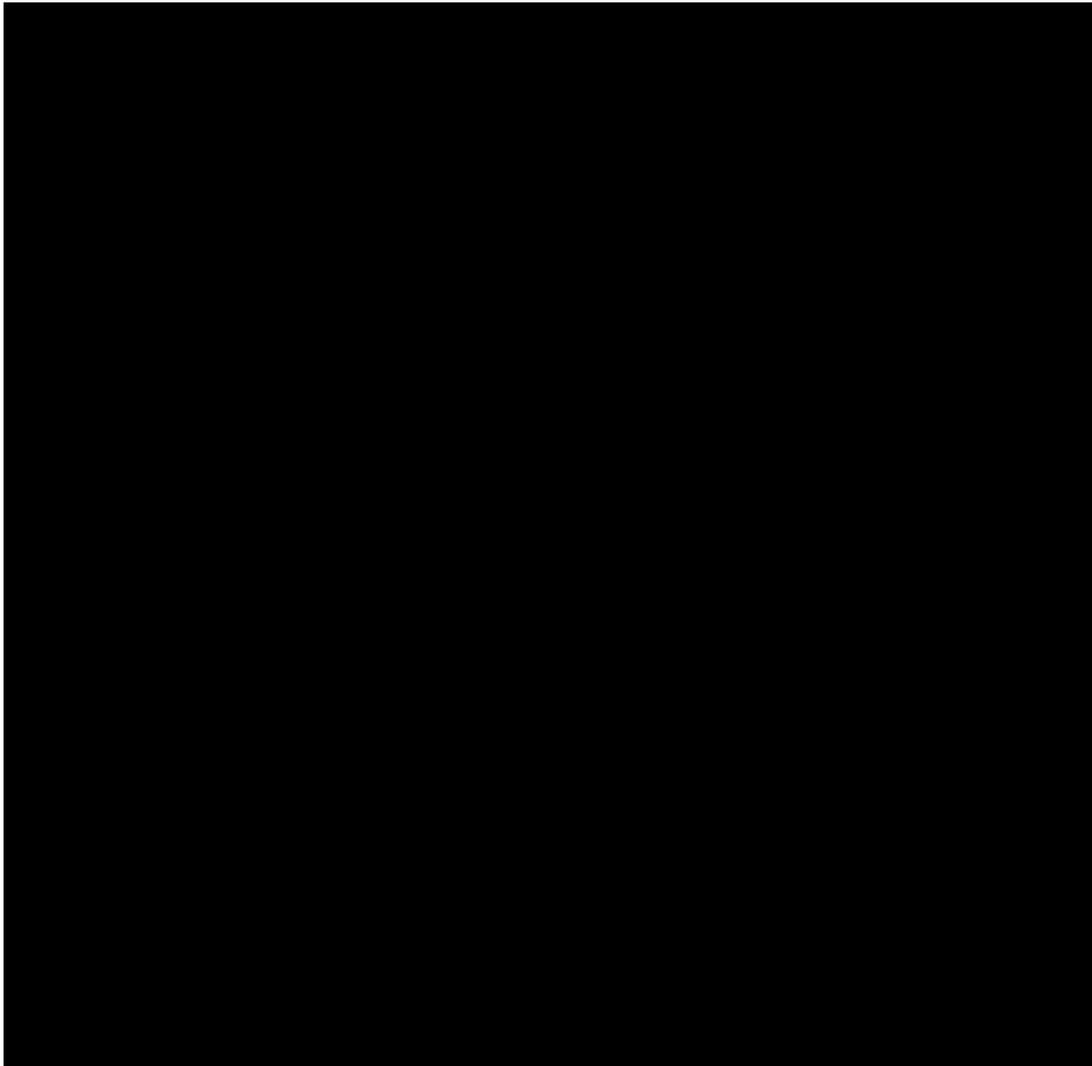
CAHA Registrar Limited (registered in England and Wales with company number 6057069), whose registered office is at 1 Eversholt Street, London NW1 2DN.

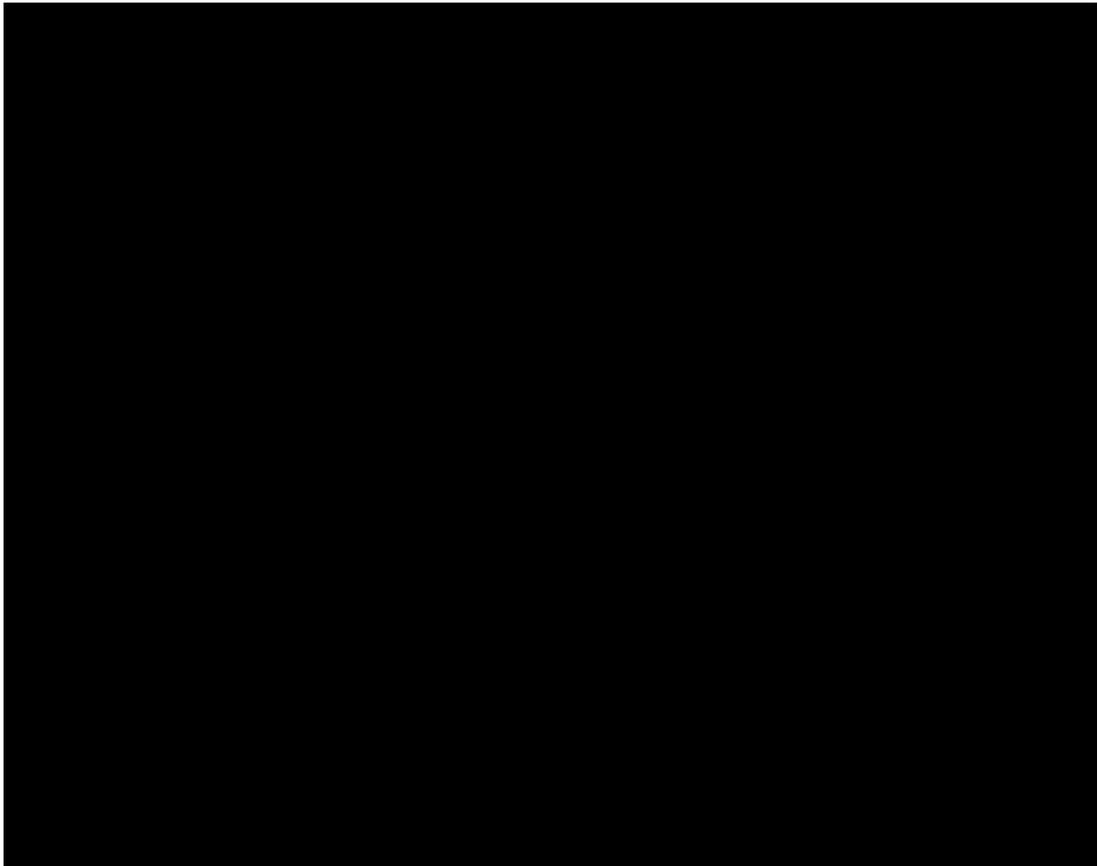
PRICING DOCUMENT

1. GENERAL

- (i) In consideration of the proper performance and completion of the Services, Network Rail shall pay the Supplier in accordance with this Agreement.
- (ii) The method of pricing to be used shall be determined by Network Rail's Representative.
- (iii) The rates for activities shall include everything necessary to carry out the activities in accordance with all the requirements of this Agreement.
- (iv) Network Rail's Representative shall be responsible for awarding and agreeing the completion of the Services.
- (v) Where during the execution of the Services the Supplier identifies and notifies Network Rail's Representative of Services at variance to the Technical Work Scope in this agreement then it shall be agreed and valued at analogous rates to those contained within the pricing document and in the cases where there are no analogous rates then fair rates shall be agreed.

2. RATES AND PRICES





3. TIME RECORDING

(i) Time Recording

- 1) Services shall be recorded on the Supplier's timesheet showing staff name, date, location, start time, finish time, less any meal breaks taken (failure to indicate breaks taken shall result in breaks as the European Working Rule Directive being deducted) to give total hours worked during the day. Time worked shall be recorded down to the nearest unit of measure, i.e., one hour. Each timesheet shall have a unique reference number. The Timesheet shall be the Supplier's and include carbonated or secure digital copies.

(ii) Idle Time, Contingency Plant & Breakdown

- 1) Contingency Plant instructed by the Client but left idle to cover emergencies or the like, shall be reimbursed at two-thirds of the rate when left standing or idle whilst on-site. Contingency Plant shall be entirely at the Supplier's expense where it is used as a replacement due to a breakdown in the Supplier's Plant. The cost of site fitters shall not be reimbursed, if used by the Supplier to respond to a breakdown.

(iii) Time authorisation

- 1) The Supplier shall ensure that each of the personnel shall, at the end of each week, complete timesheets in the form required by the Client for all personnel provided during that week and submit them to the Client for approval, which shall be signified by the signature of that Client (or other relevant approval method notified by the Client to the Supplier from time to time). Once such approval is obtained, that timesheet becomes an approved timesheet. The original top copy or secure digital copy of the

timesheet will be retained by the Client. The Supplier shall ensure that all approved timesheets have been sent to the person noted on the relevant instruction. Copies of timesheets that are not approved timesheets, or approved timesheets that are sent 3 months or more after the end of the relevant week, will not be accepted or paid for by the Client.

4. APPLICATIONS FOR PAYMENT

- (i) The Supplier will for payment of Services at the end of the Rail Industry Period in which they are fully completed and delivered to Network Rail, or in the case of part completed Services where interim payments have been agreed with Network Rail's Representative, on a pro-rata basis at each period by the end of the first week after the end of each Period, in a format prescribed by Network Rail's Representative
- (ii) Network Rail's Representative shall review this application against the records for each individual or the performance of the Services carried out and then the Network Rail's Representative shall issue a payment certificate deducting any performance regime adjustments that may be due.
- (iii) The payment process will be supported by the following where applicable;
 - 1. Completion of a detailed progress report stating the percentage completed for interim payments
 - 2. Signed original timesheets (photocopies are not acceptable)
 - 3. Copies of invoices to support any additional fees and the like.

5. AGREED RAIL INDUSTRY PERIODS

- (i) Network Rail's Representative shall issue to the Supplier at the start up meeting the list of the Agreed Rail Industry Periods for the purposes of application for payment.

6. ACCESS TO PAYMENT INFORMATION

- (i) Suppliers to Network Rail will be given access to Network Rail's iSUPPLIER system which will enable the progress of payments and the status of invoices to be viewed on-line. This includes the date on which payment will be received or the need for the Supplier to investigate a problem e.g. if an invoice is shown as being 'on hold'.

7. PRICE REVIEW



8. ADDITIONAL SERVICE LEVELS

- (i) At specific points during the Agreement it may be appropriate to add additional Service Levels. Any additional targets will be agreed with the Supplier prior to adding them to the Agreement and the Supplier will not unreasonably withhold or delay its acceptance of any additional Service Levels.

9. DISCOUNTS

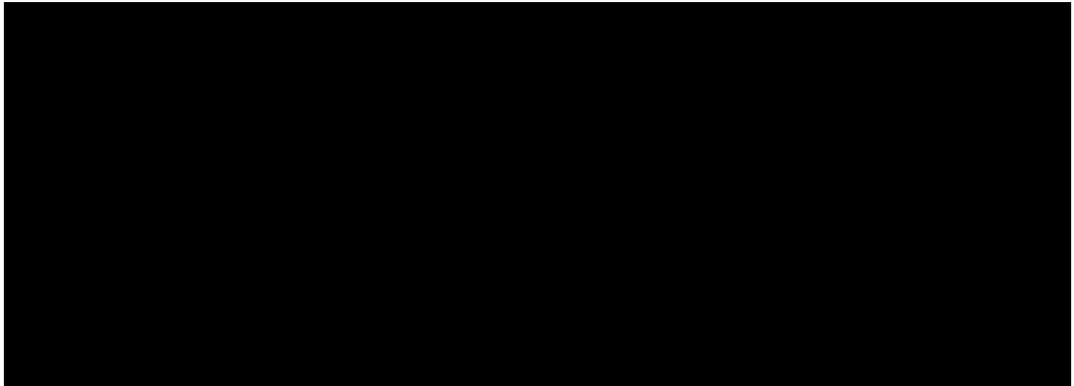
- (i) Nothing in the Price List shall prevent the Service Manager from agreeing further financial offerings, discounts, rate reductions and the like with the Supplier during the life of the contract.

10. CANCELLATION (Limit of Liability)

Cancellation or postponement by the Client

- (i) Save but for extraordinary events beyond the Client's reasonable control (force majeure), where Contract Orders have been accepted by the Supplier and then

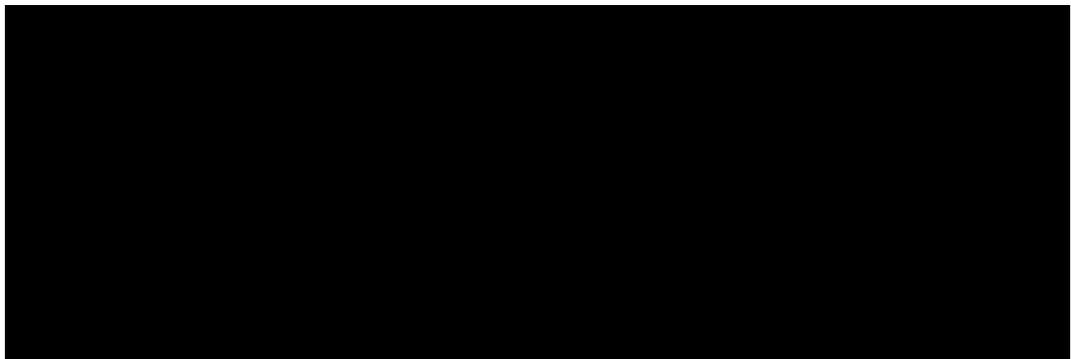
cancelled by the Client, then the additional loss and or expense payable by the Client to the Supplier shall be limited in accordance with the following table:



- (ii) Any loss and or expense will only be paid subject to reasonable evidence being provided by the Supplier that the Supplier has undertaken all reasonable endeavours to mitigate the loss.

Cancellation or postponement by the Supplier

- (iii) Save but for extraordinary events beyond the Supplier's reasonable control (force majeure), where Contract Orders have been accepted by the Supplier and then cancelled by the Supplier, then the additional loss and or expense payable by the Supplier to the Client shall be limited in accordance with the following table:



- (iv) Any loss and or expense will only be paid subject to reasonable evidence being provided by the Client that the Client has undertaken all reasonable endeavours to mitigate the loss.

Schedule of Rates

Basis of Pricing – Fixed Daily Rates

In consideration for the provision of the Services the Supplier will be paid in accordance with the Conditions of Contract based on the following Agreed Fixed Daily Rates.



PROCESS FOR ISSUING CONTRACT ORDERS

A Purchase Order is deemed to be a Contract Order for the purpose of this Agreement. The Supplier shall be awarded the services by receipt of a Purchase Order in lieu of a formal Contract Order.

An annual Purchase Order will be sent to the Supplier to instruct the services for the dates provided on the Purchase Order.

Where a Purchase Order is raised, please specify the number of working days applicable as well as a Start and End date.

KEY PERFORMANCE INDICATORS (KPIs)

1. Background

1.1. Introduction

- 1.1.1. This document sets out the details of the Key Performance Indicators (KPIs) applicable to this Framework Agreement and the method by which KPIs will be monitored.
- 1.1.2. As part of the obligations of the Framework Agreement, the Client has developed KPIs against which the Supplier will be measured throughout the term of the Framework Agreement.
- 1.1.3. The input to the KPIs will be derived from objective measurement data by both the Client and the Supplier.
- 1.1.4. The data and information required to measure KPIs is closely aligned to the data and information required for regular ongoing progress monitoring. The timescales for data provision and review within this section relate to formal review of KPIs and do not negate or affect the timescales for data provision relating to progress monitoring.

1.2. Objectives

The objectives of the KPIs are as follows:

- 1.2.1. To provide a means of monitoring Supplier performance with a view to ensuring the required standards are met and levels of service are satisfactory.
- 1.2.2. To provide measurement that will enable focussed areas of over/under performance to be targeted and managed accordingly.
- 1.2.3. To set a baseline which can be used to compare performance across the Client's supply base.
- 1.2.4. To assist in the development and management of a continuous improvement culture across the contract, that will ultimately assist the effectiveness and efficiency of the Client's core business.
- 1.2.5. For the Client and the Supplier to work together to continually innovate and improve performance in the delivery of the requirements.

1.3. Additional KPIs

- 1.3.1. The KPIs applicable to this Framework Agreement are shown in Table 1 of this document
- 1.3.2. It may be appropriate to add additional service levels and target measures during the duration of the Framework Agreement. Any additional targets will be agreed between the Client and the Supplier prior to adding them to the Framework Agreement.

2. Measurement Process

2.1. Getting Started

- 2.1.1. The Supplier shall provide a plan demonstrating when they will be able to provide the facts and data necessary to allow the measurement of performance against the KPIs,

so that the data can be used and analysed to assist with determining root cause, and continuous improvement opportunities.

2.1.2. The Supplier shall be able to provide such facts and data for all KPIs by the first review.

2.2. Time Period

2.2.1. The Client will conduct a review of the Supplier's performance against KPIs on a quarterly basis.

2.2.2. This requirement for KPI reporting does not amend the requirements for other reporting as defined in other documents.

2.3. Supplier Feedback

2.3.1. If outstanding actions are discovered against the Client, or the Client has hindered the ability of the Supplier to deliver against the performance measures, the actions required must be reported, along with the action owners from both parties and the dates for completing the actions as necessary.

2.3.2. To facilitate resolution of such issues and to minimise their impact, these actions shall be reported as soon as the Supplier becomes aware of the situation and shall not wait until the review date.

2.3.3. Where it is agreed that the Client has prevented the Supplier from delivering a specific activity, that specific activity shall be excluded from the KPI calculation. For instance, if the Client has prevented the Supplier from achieving the requirements for a specific deliverable, that specific deliverable shall be removed from the KPI Calculation, but other deliverables of the same type shall still be measured against the same KPI.

2.4. Annual KPI Review

2.4.1. The final review of a contract year will form the Annual KPI Review and form part of the Annual Contract Review meeting. The output of the Annual KPI Review will be adjusted to take into account performance over the previous reviews within the year; this will ensure that the Annual KPI Review considers the performance over the whole year and not just the final quarter.

